

NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

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Levy County Nuclear Plant

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C O N T E N T S

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18
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20
21
22
23
24
25

PAGE

Introduction by Chairman Karlin 5

Opening Statement by Ms. Olson 25

Opening Statement by Mr. O'Neill 31

Opening Statement waived by Ms. Kirkwood (Staff) 39

Contention 4 (all parts):

 Presentation by Ms. Olson 40

 Presentation by Mr. O'Neill 71

 Presentation by Ms. Goldin (staff) 112

 Rebuttal by Ms. Olson 138

Contention 3:

 Presentation by Ms. Olson 151

 Presentation by Mr. Lepre 162

 Presentation by Ms. Kirkwood (staff) 174

 Rebuttal by Ms. Olson 176

Contention 5:

 Presentation by Ms. Olson 182

 Presentation by Mr. O'Neill 191

 Presentation by Ms. Kirkwood (staff) 210

 Rebuttal by Ms. Olson 217

Progress Energy Exhibit #1 33

P R O C E E D I N G S

10:00 a.m.

1
2
3 MS. WRIGHT: Please rise. The Atomic
4 Safety and Licensing Board is now convening.

5 CHAIRMAN KARLIN: Please be seated. Good
6 afternoon. I would like to call this proceeding to
7 order. Welcome to representatives of the parties
8 and to the members of the public.

9 We're here to conduct an oral argument
10 in the matter of Progress Energy of Florida, Inc.
11 It is a challenge to an application that Progress
12 Energy has made for a combined license to construct
13 and operate two nuclear power plants in Levy County,
14 Florida.

15 The docket number, for the record, is
16 52-029-COL and 52-030-COL. It is ASLBP Number 09-
17 879-04-COL. COL stands for Combined License, and
18 that's what the application is about, a combined
19 license.

20 This oral argument is being held
21 pursuant to an order we issued on April 3rd, and
22 today's date is April 20th, 2009. And our location
23 where we are meeting is the Levy County Courthouse
24 in Bronson, Florida.

25 First I would like to introduce the

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1 members of this Atomic Safety and Licensing Board.

2 On my left is Dr. Anthony Baratta. He
3 is the Associate Chief Judge Technical of the Atomic
4 Safety and Licensing Board panel. He has a PhD. in
5 Physics, and was formally the chair -- a professor
6 and a chair of Nuclear Engineering Program at Penn
7 State. He's also in the Naval Nuclear Engineering
8 Program with the U.S. Navy.

9 On my right is Dr. William Murphy. He
10 has a PhD. in Geology. He is a professor of Geology
11 and Environmental Sciences at Cal State Chico. He
12 is a member of the United States Nuclear Waste
13 Technical Review Board.

14 My name is Alex Karlin. I'm a lawyer.
15 I did primarily environmental law for thirty years
16 and now I'm one of the judges, one of the three
17 judges here on the Atomic Safety and Licensing Board
18 for this case.

19 I would also like to introduce our staff
20 who are here with us and the people who are helping
21 us.

22 Sara Culler is our Administrative
23 Assistant. She is probably out in the hall at the
24 moment. She will be in the hall and in the back,
25 and she has some materials, and she is here to help

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1 us.

2 We also have a law clerk, Ms. Megan
3 Wright, who has been helping us. Ms. Wright has
4 been delayed. She will be sitting over here. She
5 had problems with her travel, getting in.

6 We have Mr. Joseph Ledford. Mr.
7 Ledford, are you sitting here? There he is with his
8 hand. He is with the Office of Public Affairs of
9 the Nuclear Regulatory Commission. And so any media
10 representatives, or anyone who has a question,
11 perhaps he can try to field those questions.

12 We also have two officers who are of the
13 Levy County Court who are helping us. Officer
14 Joiner and Officer Godwin are here helping us.

15 And our Court Reporter is Ms. Schultz
16 over here.

17 So that's an introduction of our
18 personnel. In a moment we will ask the parties to
19 introduce themselves, the lawyers and the
20 representatives. But before we get to that I would
21 like to thank Joseph Smith. He is the Presiding
22 Judge of Levy County Courthouse, and thank the
23 judges of the Eighth Judicial Circuit of Florida for
24 allowing us to use this courtroom. It is very
25 beautiful, and historic, and it is a pleasure to get

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1 such a nice facility for this kind of proceeding.

2 Ms. Jan Chesser, who has been the
3 Administrative Assistant, has helped us a lot, and I
4 thank her as well.

5 We welcome the public. We are glad to
6 see a number of people here today.

7 Now, perhaps I could ask the parties,
8 and the lawyers for the parties, and the
9 representatives to introduce themselves. Why don't
10 we start with the Petitioners. If you could
11 introduce yourselves. Ms. Olson, perhaps.

12 MS. OLSON: My name is Mary Olson. I'm
13 the Southeast Coordinator for Nuclear Information
14 and Resource Service. I would also like to indicate
15 that on my way into the building I received a phone
16 call from Michael Canney of the Green Party, that he
17 has encountered flooding on the road. He is on his
18 way but he is delayed.

19 CHAIRMAN KARLIN: All right. And the
20 other people at your table, please?

21 MS. OLSON: Do you want me to --

22 CHAIRMAN KARLIN: They can introduce
23 themselves or you can introduce them.

24 MR. HECKER: Good afternoon. I'm Gary
25 Hecker. I'm the Treasurer of the Ecology Party of

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1 Florida.

2 CHAIRMAN KARLIN: Welcome, Mr. Hecker.

3 MS. CAMPBELL: I'm Cara Campbell. I'm
4 the Chair of the Ecology Party of Florida.

5 CHAIRMAN KARLIN: Welcome.

6 MS. CAMPBELL: Thank you.

7 CHAIRMAN KARLIN: Welcome, Ms. Campbell.

8 Mr. O'Neill, perhaps you could introduce
9 your team.

10 MR. O'NEILL: Thank you, Mr. Chairman.

11 My name is John O'Neill with the law firm of
12 Pillsbury, Winthrop, Shaw, Pittman, representing
13 Progress Energy Florida, with my colleague to my
14 right, Michael Lepre and to my left, Ambrea Watts.

15 And I would like to take the
16 opportunity, and particularly if the public desires
17 to speak with any of them, to introduce -- the folks
18 here are from Progress Energy Florida. All right.
19 Including Jeff Lyash, who is the president and CEO
20 of Progress Energy Florida.

21 Gary Miller, who is the General Manager
22 of the Nuclear Plant Division. Bob Kitchen, who is
23 the Manager of Nuclear Plant Licensing. Paul Sneed,
24 who is the Lead Environmental Specialist and the
25 author of much of the ER which we may be speaking

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1 about today. Gail Simpson is the Manager of Public
2 Policy. Carla Groleau, who is the Community
3 Relations Manager. Kerry Powell, who is the Levy
4 Project Manager. And Wendy Horne, who is the
5 Corporate Communications Specialist.

6 All of them are behind me and would be
7 happy to speak to the public if there is someone who
8 has questions.

9 CHAIRMAN KARLIN: All right. Thank you,
10 Mr. O'Neill. Welcome. The NRC staff, please?

11 MS. KIRKWOOD: Sara Kirkwood from the
12 NRC staff, accompanied by Laura Goldin for the NRC
13 staff. We have three members of our technical staff
14 with us. Michael Masnik is a Senior Aquatic
15 Biologist with the NRC staff, and then sitting in
16 the audience is Brian Anderson and Doug Bruner, who
17 are the Safety Project Manager and the Environmental
18 Project Manager for the Levy Project.

19 CHAIRMAN KARLIN: Great. Welcome.
20 Thank you. Ms. Kirkwood. Right?

21 MS. KIRKWOOD: Yes. I changed my name.
22 It's caused a lot of confusion.

23 CHAIRMAN KARLIN: Kirkwood, is it?

24 MS. KIRKWOOD: Kirkwood is my official
25 name now.

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1 CHAIRMAN KARLIN: Okay. Welcome. Thank
2 you for introducing yourselves.

3 What I'm going to do here is talk a
4 little bit about what this proceeding is and what it
5 isn't as an introductory matter. It will take a few
6 minutes but I think it's worthwhile and I think most
7 people do.

8 But before I do that, housekeeping
9 matters, a few housekeeping matters, please. With
10 your cell phones, make sure they are turned off or
11 to mute. And if you have conversations -- I believe
12 even the rules of this courthouse, we're following
13 the host -- we're guests here so, among other
14 things, I think they are not even supposed to have
15 cell phone conversations in the hall. I believe one
16 of the officers -- you already had that covered.

17 And he also presumably talked a little
18 bit about media. If there is anyone from the media
19 here, we welcome the media. I'm glad there is a way
20 to get the word out. But there are rules and
21 cameras and that sort of thing. But it doesn't look
22 like that's going to be an issue here.

23 AUDIENCE MEMBER: I'm from the media.

24 CHAIRMAN KARLIN: Well, great, welcome.
25 Please just use the ambient light if you want to

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1 take pictures and please, no moving around for
2 photography. It needs to be in the back, but
3 welcome.

4 There will be a transcript made of this
5 proceeding with the court reporter and then that
6 transcript will be available on the NRC website in a
7 week or two. And members of the public, as well as
8 the parties, can access that on the Adams System.

9 Ms. Olson, do you have a question?

10 MS. OLSON: I have a housekeeping
11 question.

12 CHAIRMAN KARLIN: Yes?

13 MS. OLSON: Am I allowed to drink water
14 at the table?

15 CHAIRMAN KARLIN: Yes. You are allowed
16 to have water at the table, I believe. This is not
17 a problem, sir?

18 COURT BAILIFF: Normally not on the
19 table. They can have it down by their feet.

20 CHAIRMAN KARLIN: Down by her feet or
21 something.

22 MS. OLSON: But I'm allowed to consume
23 it?

24 CHAIRMAN KARLIN: Yes, yes.

25 MS. OLSON: Okay. Thank you.

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1 CHAIRMAN KARLIN: Yes, I mean,
2 sometimes it gets warm in here. We have water. I
3 mean, no soda, no food, nothing that would, you
4 know, but I think water is all right.

5 Okay. Sort of an overview, for the
6 benefit of the public, I'm going to talk about three
7 main things here.

8 The role of this Board, what is this
9 Atomic Safety Licensing Board, that's issue number
10 one.

11 Two, kind of a history up to date of
12 what's going on with this application as we
13 understand it.

14 And three, the purpose of today's
15 proceeding. We would like to cover those points.

16 First, the nature and the role of the
17 Atomic Safety and Licensing Board. Who are we?
18 There is a handout that Ms. Culler has out in the
19 hall that talks in general about the Atomic Safety
20 and Licensing Board and the kind of things that
21 these Boards handle. So you might look at that.

22 But we are the three judges here today
23 who are on a Board who will decide this case. The
24 federal law charges the Nuclear Regulatory
25 Commission with regulating nuclear facilities. And

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1 right now the NRC is headed by four commissioners.
2 There is a potential for five, but only four have
3 been appointed, and they are appointed for five-year
4 terms by the President and confirmed by the Senate.

5 And the Commissioners are the head of
6 this agency, of the NRC, and they have a large staff
7 of regulatory personnel who handle many, many
8 technical and environmental issues. And that staff,
9 represented here by Ms. Kirkwood and her team, are
10 in the process of reviewing the application.

11 The Board's role is different than that
12 of the staff. This Board, this Atomic Safety and
13 Licensing Board and the judges, are independent of
14 the staff. We don't have -- we work in the same
15 building but we're kind of in a little alcove off to
16 ourselves. And we have no allegiance to staff, no
17 connection with the staff. They are fine people,
18 we've got nothing against them, but we're just not
19 connected with them. And that's sometimes a source
20 of confusion.

21 In fact, under the law we are prohibited
22 from communicating with the staff about anything to
23 do with this case and they are prohibited from
24 communicating with us, just like any other party.
25 Just like the environmental groups are prohibited

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1 from communicating with us outside of this courtroom
2 and outside of the formal written pleadings that are
3 filed. And the same thing with the Applicant. We
4 can't talk with them and they can't talk with us.
5 And that's called ex parte communications, and we're
6 not allowed to have that and we don't.

7 Likewise, this Board is separated from
8 the four Commissioners. We don't communicate with
9 them about this case. They don't tell us what to
10 do, or how to rule, or anything. They appoint us
11 and they tell us to, you know, call them the way we
12 see them and rule as best we understand and know
13 how. And so there's no communications between us or
14 the Commissioners.

15 It's kind of a three parts of the
16 agency. The Commissioners, the four of them; the
17 staff, which is a very large group of professionals;
18 and then the Board, which is a small group of
19 judges, technical and legal judges who kind of sit
20 off and handle these cases.

21 We issue rulings and if somebody doesn't
22 like our rulings they can appeal it to the
23 Commission. The Commission can overturn us, or they
24 can affirm us, or whatever. And if you don't like
25 them, then you can go to the court, to the federal

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1 courts.

2 We don't get bonuses; we don't get
3 raises; we don't get -- you know, our salary is not
4 dependent upon anything that we rule here today.
5 And it is just kind of a straightforward. These are
6 all set up in a way to try to give us independence
7 and allow us to rule, you know, the way we see --
8 the best way, according to our best lights.

9 So that's kind of what the Board is, the
10 Atomic Safety and Licensing Board and the panel.

11 The history of this proceeding, the
12 second point I want to talk about briefly, some of
13 you may know far more detail than we do. Because
14 all we know is what has been filed in front of us in
15 these pleadings here.

16 But those indicate that on July 28th,
17 2008, Progress Energy of Florida submitted an
18 application to the NRC to build -- construct and
19 operate two nuclear power plants in Levy County.

20 And staff did an initial look at that,
21 that application, those applications, and decided
22 they were essentially complete and so they docketed
23 the application. They hadn't reviewed them for
24 substance but they docketed the application.

25 And on December 8th, 2008, the NRC

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1 issued a notice in the Federal Register saying:
2 Anybody who has an objection or concern, or
3 challenge to this proposed, these two proposed
4 nuclear power plants, speak now or forever hold your
5 peace. You've got sixty days to file a challenge or
6 contentions.

7 And so the Intervenors here, Progress --
8 I'm sorry -- the Ecology Party of Florida, the Green
9 Party of Florida, and NIRS -- I'll use that acronym,
10 if you don't mind, Nuclear Information Resource
11 Services -- filed such a contention on February, or
12 a petition on February 6th, 2009. And they filed
13 eleven contentions.

14 That is a kind of word we use in the
15 ASLBP parlance under the Regs. Some of those
16 contentions contain a lot of sub-parts, or one of
17 them is, in particular. And so, you know, seventeen
18 sub-parts. So some of them are pretty complicated.
19 And all of them we've looked at very carefully.

20 Later, Progress Energy and the staff
21 filed answers to those contentions and then the
22 environmental groups filed replies.

23 And so on February 23rd, the
24 Commissioners appointed this Board. This is when
25 these three judges -- there's a whole group of

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1 judges, and we three were appointed to handle this
2 case. So that's when we first found out about this
3 case and started reading the materials that you all
4 had submitted.

5 And so, having looked at them and read
6 them, we decided we had some questions about the
7 pleadings, the contentions, and the answers that
8 have been filed. And so we issued an Order on April
9 3rd, saying we want to have this oral argument here
10 today and tomorrow to ask questions and to listen to
11 what you all have to say to explain some of these
12 points to us so we can issue a better ruling,
13 hopefully.

14 And a final point on the history -- and
15 I'm sure you all know this -- but this is not the
16 Crystal Energy Complex License Renewal application.
17 Separate proceeding, different county, you know, but
18 it's not too far away. And I know they had a
19 meeting just last week on EIS scoping or something.
20 Well, obviously this is a different proceeding in a
21 different county.

22 So third, what is the purpose of today's
23 proceeding? The purpose is, the Board has to decide
24 whether the request for hearing that's been filed by
25 the Petitioners has presented anything that's called

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1 admissible contentions under the NRC regulations.

2 And the Reg is 10 C.F.R. 2.309 (f)(1),
3 and we'll focus on that a goodly amount in these
4 questions here the next couple of days. And that
5 Reg says: In order to get an admissible contention
6 you have to, you know, provide a certain amount of
7 minimal information. It's strictly applied but it
8 is generally relatively -- you have to give a
9 specific statement of the issue.

10 What are your concerns? What is the
11 problem? What is the alleged problem? The issue
12 has to be material to the NRC's regulatory role and
13 it has to be within our jurisdiction and our scope.
14 You have to provide a brief explanation of the basis
15 for your issue.

16 There are various things that have to be
17 met just to get a contention admitted. And that's
18 what we are here to try to figure out. And the
19 Applicant, and the staff, and the Interveners have
20 filed a lot of material pro and con on whether these
21 contentions are admissible. And we've read them all
22 and now we're going to ask questions about it.

23 If we decide that a contention, or
24 several contentions, or all of them are admissible,
25 then we will issue a ruling, a written ruling.

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1 We're not going to rule here from the bench today or
2 tomorrow. We are going to issue a written ruling
3 and we will say yes, we think they are admissible,
4 and then this proceeding will go on to a next step
5 which would be having evidentiary hearings on those
6 contentions. Having an actual trial with witnesses
7 who would speak under oath and this sort of thing.
8 So that's one route we could go from here.

9 And the other route is that if we decide
10 that none of the contentions are admissible, they
11 didn't meet the basic threshold criteria, then we
12 would rule that way and that would be the end of
13 this proceeding, subject to appealing to the
14 Commission and going up and saying: Well, the Board
15 was wrong; they made an error; you should reverse
16 what they did.

17 So today's proceeding is important but
18 it is limited to contention admissibility. This is
19 not a time for members of the public to come up, and
20 talk, and give statements. There may be an
21 opportunity for that at some later juncture.
22 Oftentimes NRC, the staff, will have hearings or
23 meetings with the public where that occurs, but this
24 is not the time for that.

25 Written limited appearance statement

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1 sessions, statements can be filed, and we've given
2 instructions on how that would be done.

3 Is there any additions? Any other
4 things you want to add at this point?

5 (No response.)

6 CHAIRMAN KARLIN: Okay.

7 Format. Before we start, the format.
8 This proceeding is going to be broken down into
9 three main parts.

10 First we will have opening statements by
11 each of the parties. The Petitioners will get an
12 opening statement, a joint one, and then the
13 Applicant, and then the staff. And will do it in
14 that order, Petitioners, Applicant, staff. So
15 opening statements.

16 Then we will go into each of the
17 contentions and the parties have been given a
18 certain amount of time to talk about those, each
19 contention, and we will -- most of that time will
20 actually be consumed, or much of it, by us asking
21 them questions.

22 And then at the end, tomorrow, we will
23 have closing arguments, or closing statements. It's
24 not really arguments. And they will be very short,
25 like five minutes.

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1 The sequence of the contentions will be
2 as set out in our Order. We're going to start out
3 with Contention Number 4, and that's a very long and
4 complicated one. It has, I believe, depending on
5 how you count it, it looks like seventeen sub-parts.
6 So we have allocated a total of two hours to that
7 contention. The Petitioners will get fifty minutes;
8 the Applicant will get fifty minutes; and the staff
9 will get twenty minutes. And we will have questions
10 on that.

11 And we will try to be relatively crisp
12 with regard to the time. Ms. Wright would be here
13 keeping the time and we will try to give you a two-
14 minute warning. And when the time is up, you know,
15 we will pretty much say, "Thank you," and move to
16 the next person. A lot of this is discipline for
17 ourselves because we're going to be the ones who are
18 asking questions.

19 We are going to talk about Contention
20 Number 2. As I think Ms. Wright has told the
21 parties, but not the public -- I'm sorry, Contention
22 Number 1. I'm sorry. In Contention Number 1, we
23 will do that probably first thing tomorrow morning.
24 We're going to do that tomorrow and we will probably
25 do that first thing tomorrow morning.

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1 When you speak, please use the podium.
2 I would appreciate it if each of you would come to
3 the podium and speak from there. Each party will
4 only get one representative to speak on each
5 contention. We don't want to have a lot of tag-team
6 going on, different people coming up for different
7 parts of the contention. One contention, one
8 speaker. And this is not a time when we get the
9 expert who comes in and testifies. This is a time
10 when essentially the representative or the lawyer
11 will do the talking.

12 Speak from the podium. Please speak
13 loudly. You will be facing this direction but we
14 want everyone in the back of the room to be able to
15 hear you as well. So we want to make sure the
16 acoustics are okay. I mean, this is a good
17 courtroom so I think it will be fine but some
18 facilities we've had trouble with on that.

19 We intend to go until 6:00 p.m., or so,
20 tonight when we hit a breaking point, and we will
21 reconvene tomorrow at 10:00 a.m. 10:00 a.m. because
22 the judges here have some other proceeding that
23 apparently starts at 9:00 and will go for a half
24 hour or forty-five minutes, so we can't really get
25 in here until 10:00. So that's why we set it up

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1 that way.

2 And we could be here -- they've been
3 very nice and said we could stay until 7:00 p.m.
4 tomorrow evening. I really hope we don't have to go
5 that long but it is nice that the judges and the
6 staff have agreed that we could go that long.

7 So now we are ready to proceed with the
8 initial statements. But before we do that, are
9 there any procedural questions or issues that the
10 parties think need to be brought up at this point?

11 Yes, Ms. Olson?

12 MS. OLSON: I don't anticipate this, but
13 because I am representing three separate Petitioners
14 in giving the oral argument, if I am really in a
15 blender, I would like to be able to receive a note
16 from somebody in an extreme condition. I don't mean
17 they're going to be up there all the time but, you
18 know --

19 CHAIRMAN KARLIN: Well, that will be all
20 right. I mean, you know --

21 MS. OLSON: I just want to open the door
22 to that, that if I'm really way off in representing
23 what they want heard here, that I can receive a note
24 from them.

25 CHAIRMAN KARLIN: I think that will be

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1 all right. I mean, it's not unheard of. So, yes,
2 if that has to happen -

3 MS. OLSON: Okay. Thank you.

4 CHAIRMAN KARLIN: Anything else, Ms.
5 Kirkwood or Mr. O'Neill?

6 (No response.)

7 CHAIRMAN KARLIN: Okay. Then let's
8 start with the opening statements. Ms. Olson, you
9 have ten minutes.

10 MS. OLSON: Your Honors, thank you very
11 much for traveling here. And I want to say that the
12 reason I'm here is because of people who live in
13 this community, in Levy County, in the surrounding
14 area. I wouldn't be here except for the fact that
15 they are deeply concerned. And I'm very pleased
16 that we are having this opportunity to have their
17 concerns brought forward.

18 In our view, this development of
19 Progress Energy Florida seeking to build Levy County
20 1 and 2 will be an enormous impact on this
21 community. No matter how you value that impact,
22 that impact will occur if this project goes forward.

23 And since there are local concerns that
24 the impact may, in fact, be very negative, that it
25 carries high risk for these people. I, again, thank

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1 you for being here.

2 I am Mary Olson with Nuclear Information
3 and Resource Service. I live and work out of North
4 Carolina but my area of concern and collaboration
5 with affected communities is the entire southeast.
6 And we would not have entered this proceeding
7 without partners that are based here in Florida,
8 being the Ecology Party of Florida and the Green
9 Party of Florida. But that was a basic criteria for
10 our involvement, that there be local organizations
11 with local membership as well.

12 And I just want to add that we have a
13 combined total of nineteen declarations that were
14 filed with our petition. However, Nuclear
15 Information and Resource Services had a steady
16 stream of new members and people sending in
17 additional declarations which I haven't really
18 wanted to deal with all the red tape about whether
19 to file those or not; at some point I may inquire.
20 But just to let you know, we are continuing to have
21 people saying, "We want to be part of this." So
22 that's why we're here.

23 The local concerns are the ones we have
24 brought. Water, water, water, water. I could keep
25 saying that word over and over. Water. Cost in

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1 terms of the impacts in every possible direction of
2 that word.

3 Now, a lot of people came to me wanting
4 us to bring security contentions and I have to tell
5 you that I said no. There would be security
6 contentions if you had a different lead organizer of
7 this project, but I just can't deal with all of the
8 very necessary and real requirements of litigating
9 security concerns. I can't do that. I just don't
10 have the wherewithal to go there.

11 But I want you to know that the local
12 community would have liked us to bring security
13 concerns. So I'm putting that in the record.

14 Safety. Yeah. Basically, big one. And
15 associated with safety is waste. And then I think
16 overall there is a general chafing at the way our
17 current world is put together, the blind alley we
18 seem to be in, in which the regulations really
19 weren't going to let us do a good job and the
20 neglect of better options. But we're still going to
21 try and talk about that because people in this
22 community are deeply upset at the fact that Progress
23 Energy Florida seems to be ignoring a lot of better
24 options. And NEPA gives us the opportunity to bring
25 that.

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1 Now, I want to pause for a moment and
2 apologize. I think shoddiness of work can sometimes
3 infer or project disrespect. And I know that the
4 work that we collectively put in was below a par
5 that I prefer.

6 But I'm the facilitator of this process
7 of a really truly collaborative effort. And
8 although the application was filed in July, and
9 although the Federal Register Notice happened in
10 December, there was a miscommunication in our
11 community in November that led me to believe that a
12 different organization with a large membership base
13 in Florida was, in fact, going to do this job.

14 And happily, or unhappily, the design of
15 having a Federal Register notice come out in
16 December either means that you have to suffer all
17 the way through the holidays trying to work or you
18 don't. And I was happily ignorant of the fact that
19 nobody was rising to that intervention notice until
20 January 4th.

21 So as much as there are typos and I
22 think what bothers me the most is there was no time
23 whatsoever to place the contentions as well as they
24 should have been in a petition. They do interact if
25 you take the substance, but there is not as much

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1 articulation of that as I would have preferred. But
2 I was literally receiving expert written material on
3 the day of the deadline and having to simply put it
4 in. So I apologize to you that there was not a
5 little bit better time frame.

6 And I also want to acknowledge that many
7 of you in this room function as experts. And I just
8 want to tell you that our experts are also a little
9 bit unhappy with this, but they did say yes, even
10 with an incredibly short time line and almost no
11 money, to giving us very professional work. And,
12 unfortunately, we had two more that didn't quite
13 jell in time. We'll get to that with the various
14 pleadings, particularly Contention 5.

15 So, with that I just want to say that my
16 co-Petitioners are supporting my taking this role.
17 And I think the final thing I want to bring out in
18 this opening statement is part of why Levy County
19 wanted to stand as such a significant application at
20 this point, in sort of the overall process of NRC
21 going back into licensing of new reactors, is that
22 at least east of the Mississippi River this is the
23 first green field site. And I really will continue
24 to stress that fact in relation to the contentions
25 we've brought because it is significant. And it is

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1 part of why I have stepped out of my role of
2 supporting, pro se, contention development and
3 intervention across the region and into this role of
4 coming to plea before you, because we couldn't stand
5 by and let this one go unchallenged.

6 Thank you.

7 CHAIRMAN KARLIN: Thank you.

8 Mr. O'Neill? Oh, before you start, sir
9 -- and please come up to the podium -- I would like
10 to introduce Megan Wright. Ms. Wright is our law
11 clerk lawyer with the Board. She advises us on
12 these matters. Welcome. I'm glad you made it.
13 Pretty tough travel situation.

14 She is now going to be our official
15 timekeeper so that when the ten minutes, and
16 whatever other time frame occurs, what we try to do
17 is give everyone a two-minute warning. Let's give
18 them a two-minute warning which would be --

19 What color card do we have to show,
20 flash or something, to say you've got -- oh, just
21 put something up. Just say -- and she will say "two
22 minutes," so that I can hear it as well, we can all
23 hear it. And we will try to give you a little
24 warning when the time is about to expire.

25 MS. OLSON: Your Honor, I would

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1 similarly like to note that Michael Canney of the
2 Green Party has arrived in the courtroom.

3 CHAIRMAN KARLIN: Okay. Yes. Mr.
4 Canney, welcome, yes.

5 So, with that, she will give you a two-
6 minute warning.

7 Mr. O'Neill?

8 MR. O'NEILL: Chairman Karlin, before I
9 begin, I would like to approach the bench and hand
10 out a couple of pictures that will help facilitate
11 this --

12 CHAIRMAN KARLIN: Are you going to share
13 them with the --

14 MR. O'NEILL: I am going to share them
15 with everyone. And it is just pictures that are the
16 facts. On each page I give the citation to where it
17 is in the document. And it just helps, I believe,
18 you will find, as we go through this today, to
19 understand where things are and relationships. And
20 that's really the idea.

21 If you look at the bottom of each page
22 you will see an ADAMS number. And these
23 presentations have been made a number of times in
24 public meetings before the NRC, showing these
25 pictures. And that gets to the first thing I would

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1 like to do is just to introduce this plant.

2 CHAIRMAN KARLIN: Okay. Let's wait a
3 second here. I want everyone -- have the Applicant
4 -- I mean, the Interveners and the staff had a
5 chance to look at this before? Do you have any
6 objection to this? I mean, it seems pretty
7 straightforward, but -

8 MR. O'NEILL: And it is not an exhibit,
9 or anything, of course. It is just a matter of
10 helping -- a picture is worth a thousand words.

11 MS. OLSON: Thank you for the colored
12 pictures.

13 CHAIRMAN KARLIN: No objections? Staff
14 any objections?

15 MS. KIRKWOOD: We have no objections to
16 him using it.

17 CHAIRMAN KARLIN: No objection, Ms.
18 Olson?

19 MS. OLSON: No objections.

20 CHAIRMAN KARLIN: All right. Proceed.

21 MR. O'NEILL: Mr. Chairman, Dr. Baratta,
22 Dr. Murphy, I would like to do three things. One,
23 is to describe the nuclear plant that's proposed for
24 Levy to give you some context, geographic, and to
25 landmarks that I believe will help us the next two

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1 days.

2 Secondly, is to provide an overview of
3 the Levy Nuclear Plant and government involvement
4 which is important as we talk about what role the
5 NRC has, and what other agencies are approving
6 issues relating to water, for example, and cost.

7 And third, to provide an overview of the
8 inadmissibility of the Petitioner's contentions.

9 And if you turn to page three -- excuse
10 me, page two -- which is the map.

11 CHAIRMAN KARLIN: Why don't we have this
12 marked in some way for the record. Perhaps we could
13 call it Progress Energy Exhibit Number 1 for the
14 oral argument.

15 MR. O'NEILL: And I did give a copy of
16 it to the Court Reporter.

17 CHAIRMAN KARLIN: So we will call it
18 Exhibit Number 1.

19 (Progress Energy Exhibit No. 1
20 identified, 1:35 p.m.)

21 MR. O'NEILL: So, Exhibit Number 1, page
22 two, is a fairly straightforward map. If you came
23 up route -- it's 1998, you passed over the barge
24 canal and you will see, to the left as you passed
25 over the barge canal, you couldn't miss Crystal

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1 River Nuclear Power Plant. And you pass the site to
2 the right, the proposed Levy County Power Plant
3 site.

4 So this shows geographically Lake
5 Rousseau, the barge canal, the Crystal River Plant,
6 the proposed Levy County site, which is 9.6 miles
7 from the plant, and the Levy County site being 7.9
8 miles from the nearest coastline.

9 The next picture is a picture from a
10 satellite or perhaps a plane.

11 CHAIRMAN KARLIN: So this is page three
12 of --

13 MR. O'NEILL: Page three of the exhibit.
14 And you will see that there is a yellow block and a
15 blue block. The yellow block is the 3,000-and some
16 acre site that the Levy County Nuclear Plant will be
17 situated. The blue block is some additional land
18 that is somewhat less than 3,000 acres, that was
19 also purchased by Progress Energy to provide access
20 from the barge canal and control. And you can see
21 the barge canal down at the bottom of this picture,
22 and Lake Rousseau to the right. And you can see the
23 location of Units 1 and 2.

24 And the next slide, which is slide
25 number four, is a close-up of what you were looking

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1 at before, which again shows Unit 1, Unit 2, where
2 the cooling towers will be and the switch yard. And
3 the blue part of that is the buildings, principally.
4 And if you had very good eyesight and looked
5 carefully, you will see a round cylinder in the
6 middle, a round circle, which would be the reactor
7 containment.

8 Page five is an aerial photo of the Levy
9 County site. You can see obviously that it was, at
10 one point, a tree farm that had been harvested and
11 you can see the furrows where trees were growing.
12 And to the far right there is sort of a "V" of roads
13 which would be the location of Unit 2, and to the
14 far left you can see, again, some trucks and some
15 little roads that have been there, and that would be
16 where Unit 1 will be located.

17 Page six shows you the barge canal
18 looking down from Lake Rousseau at the lock. To the
19 far left is the Crystal River plant and you see, to
20 the right, the canal, which is a offshoot from Lake
21 Rousseau and the bypass of the canal to the river.
22 The canal, of course, goes into the Gulf and is
23 brackish water and then to the right is fresh water.

24 CHAIRMAN KARLIN: So this is facing to
25 the west?

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1 MR. O'NEILL: That is correct. It is
2 facing to the west to the Gulf. And, therefore, the
3 Levy County plant will be a couple of miles, as we
4 look at the picture, to the right.

5 CHAIRMAN KARLIN: Yes.

6 MR. O'NEILL: And then the final picture
7 is one we'll talk about later when we talk about
8 Contention 4, which is the foundation concept. And
9 the important point here is you see a representation
10 of the nuclear island; you see the containment
11 building; you see underneath it -- and we'll talk
12 about this -- grout holes and the roller compacted
13 concrete which will be part of the foundation.
14 You'll see the existing grade and the proposed grade
15 of the site around the nuclear island and around the
16 plant site, and also the reinforcing diaphragm
17 walls. And we will talk about that a little bit
18 later to understand how this will be built and use
19 of fill and aggregate.

20 So that's my show-and-tell. And the
21 next point I would like to make is to note that the
22 Levy Nuclear plant is a joint public-private
23 partnership. Why do I say that?

24 The federal and state governments have
25 encouraged the decision to build Levy and are

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1 participating in it. The AP-1000 was developed with
2 new start funds, funding from DOE under the nuclear
3 power 20-10 program. The AP-1000 is the plant that
4 will be built here.

5 The energy policy after 2005 provided
6 tax credit loan guarantees and support for the
7 nuclear plants. Florida law set policy for nuclear
8 cost recovery to encourage nuclear plants, and
9 Florida law streamlined transmission facility
10 siting. The Florida Public Service Commission
11 granted Levy a certificate of need on August 12,
12 2008.

13 Approvals from numerous government
14 agencies will be required. Many of the issues, and
15 all of the environmental issues raised by
16 Petitioners, have been or will be decided by other
17 government agencies which have primary jurisdiction
18 over those issues.

19 As I mentioned, the Florida Public
20 Service Commission makes a need determination which
21 they've done. They also will grant the rates and
22 the prudence of cost recovery.

23 The Florida Department of Environmental
24 Protection have just completed a hearing on the
25 plant siting. They will also be responsible for the

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1 NPDS permit and have granted a federal air permit.
2 The principal issue that they looked at was salt
3 drift.

4 The Army Corps of Engineers is
5 responsible for the 404 permit for impacts on
6 wetlands and navigable waters.

7 And for non-jurisdictional wetlands, the
8 Florida Department of Environmental Protection will
9 be looking at the issues, including mitigation.

10 U.S. Fish and Wildlife deals with
11 protected species. The Southwest Florida Water
12 Management District deals with the ground water
13 issues.

14 FRCR handles transmission. The Florida
15 Reliability Council Reserve Margin EPA can second
16 guess both the Florida Department of Environmental
17 Protection or the Army Corps of Engineers with
18 respect to their decisions. And the NRC, of course,
19 has primary jurisdiction on public health and
20 safety.

21 We believe that all the proposed
22 contentions are inadmissible and I will not
23 summarize the 200 pages that we have in our lengthy
24 response. There are twenty-seven independent
25 issues. Why was it so lengthy?

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1 Each contention must pass muster with
2 each of the six requirements for an admissible
3 contention. Most fail to do so for multiple
4 reasons, each fatal to its candidacy. That's why it
5 took so long. Because it's our obligation to our
6 client to go through each of the requirements and to
7 show whether it's two, or three, or four, and all
8 six that they failed to pass muster to make that
9 explanation so that we're not spending time, effort
10 and money to litigate something that should not be a
11 contention.

12 We are pleased to answer your questions
13 and we will address the arguments made by
14 Petitioners in the reply over the next two days. We
15 will not summarize what we said in 200 pages. We
16 will directly address what the Petitioners say today
17 and what they said in their reply and your
18 questions.

19 Thank you very much.

20 CHAIRMAN KARLIN: Thank you, Mr.
21 O'Neill.

22 Ms. Kirkwood?

23 MS. KIRKWOOD: The NRC staff waives it's
24 opening statement.

25 CHAIRMAN KARLIN: Oh, okay. Well, that

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1 will get us moving along. Thank you.

2 With that we will start with Contention
3 4 as we lay it out in our order. Contention 4 has
4 numerous sub-parts. And you have fifty minutes, Ms.
5 Olson.

6 MS. OLSON: Do you want me at the
7 podium?

8 CHAIRMAN KARLIN: Yes, we do, please.
9 Now, how much of your fifty minute time do you want
10 to reserve for your rebuttal? We've set up twenty
11 minutes of that at a minimum. Do you want more than
12 that or is that okay?

13 MS. OLSON: That's about right.

14 CHAIRMAN KARLIN: Okay. So you will
15 have thirty minutes at this point and then a break,
16 and then Petitioner will -- I'm sorry -- the
17 Applicant will do their fifty minutes, and staff
18 will have twenty minutes, and then you will have the
19 final twenty minutes. You get to begin each one and
20 you get to end each one.

21 MS. OLSON: Thank you.

22 CHAIRMAN KARLIN: Please proceed.

23 MS. OLSON: Okay. I'm a little bit
24 speechless because the structure of this submission
25 is reflected as sub-parts of a single contention all

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1 listed as 4, because, in fact, the expert viewed it
2 as whole cloth.

3 And you'll have to forgive me. I'm sort
4 of a plain speaker and sometimes I say things a
5 little plainer than what is written. But I'm really
6 going to try and keep myself within the material
7 that we have presented to you.

8 But the basic backdrop of this
9 contention --

10 CHAIRMAN KARLIN: Before we start -- and
11 I don't want this to count against your time -- but
12 we have a problem with regard to Contention Number
13 4. And that is that we've looked at the
14 documentation and Dr. Bacchus' CV is not filed on
15 the -- electronically in a proper way on the
16 electronic information exchange. She has passworded
17 it or pass-coded it. And I know you exchanged some
18 e-mail. There was an e-mail with what we call the
19 Office of the Secretary.

20 MS. OLSON: I was under the impression
21 it had been resolved.

22 CHAIRMAN KARLIN: No, apparently not.

23 MS. OLSON: I apologize.

24 CHAIRMAN KARLIN: Dr. Bacchus has not
25 filed her CV in an electronic format without

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1 password. And that, I believe is your exhibit --
2 Bacchus Exhibit B. And I believe there is also
3 another Bacchus Exhibit A -- A and B Bacchus
4 exhibits -- that are not filed. Exhibit A is her CV
5 and Exhibit B is what I think she has referred to as
6 a synopsis of her SEQUA, of the SEQUA Regs, or some
7 SEQUA document.

8 MS. OLSON: I apologize. I was unaware
9 that that had not been resolved; I truly thought it
10 had been. And I will address it as soon as I'm back
11 in the e-mail loop.

12 CHAIRMAN KARLIN: Well, here is the way
13 we're going to proceed. We need to have that filed.
14 If you want it filed, then you've got to get it
15 filed and we will give you, say, one week to get it
16 filed, mailed to NRC, hard copy, and to all the
17 parties. And if Dr. Bacchus doesn't get it in by
18 then, then we're not going to look at her CV. And
19 her expertise may be very dependent upon her CV, so
20 she better get it in.

21 MS. OLSON: Thank you for letting me
22 know that that was outstanding. And I discovered --
23 while we're just on this subject as pertaining to
24 Contention 3 -- that, in fact, Leon Jacobs' CV also
25 was not filed. And I only discovered that this

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1 morning.

2 So this is an error that I don't know
3 how it occurred. It did not have anything to do
4 with passwording and it is my error, probably. But
5 if you want to see his CV I will be more than happy
6 to provide it. But I don't honestly have it,
7 either. So, anyway, I'm putting that on the record.

8 CHAIRMAN KARLIN: Well, do you object
9 to, Mr. O'Neill, to having -- what is his name?

10 MS. OLSON: Leon Jacobs, Contention 3.

11 MR. O'NEILL: We have no objection to
12 filing his CV.

13 CHAIRMAN KARLIN: Okay. So get both of
14 them in. Staff?

15 MS. KIRKWOOD: No objection.

16 CHAIRMAN KARLIN: Okay.

17 MS. OLSON: My apologies on both counts.

18 CHAIRMAN KARLIN: Get both of them in.

19 If Bacchus has got a problem with the electronic
20 passwords, put it in writing. But we have to have
21 it in by next Monday.

22 MS. OLSON: Okay.

23 CHAIRMAN KARLIN: COB, close of business
24 next Monday -

25 MS. OLSON: Got it.

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1 CHAIRMAN KARLIN: -- it needs to be in
2 our hands and shared with the other parties. Thank
3 you.

4 MS. OLSON: Thank you.

5 CHAIRMAN KARLIN: So proceed. I'm
6 sorry.

7 MS. OLSON: Okay. So whole cloth. All
8 of these sub-sections and, again, in my apology, I
9 believe we end with a -- no, we start with 4-A and
10 we end with 4-N, which is a second "N", and so it
11 really should be "P". I mean, this is bad work.
12 I'm sorry.

13 CHAIRMAN KARLIN: We will call that N-2.
14 We're going to call that N-2.

15 MS. OLSON: N-2. Okay. So this was in
16 part because of receiving what was a very long
17 affidavit, not written in contention form, that I
18 worked with on the filing deadline day. I don't ask
19 for any lenience on this part. I'm simply giving
20 you a contextual framework for understanding that
21 this was not a long neglect situation. It was a
22 rushing for cooperation with the Nuclear Regulatory
23 Commission's determination to give the industry as
24 fail-safe a process as possible. So we met the
25 deadline but we apologize that it was not a little

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1 more gracefully.

2 So, the big issue here is the assessment
3 of direct, indirect, and cumulative impacts. You
4 will find those words in almost every single sub-set
5 of Contention 4. So that is the thread that runs
6 through. And the dispute is over Progress Energy
7 Florida's assessment that the impacts will be small.

8 Our expert says no, in fact, the
9 potential for impacts are large. And on --

10 CHAIRMAN KARLIN: So, it is your
11 position that Contention 4 does not break out into
12 sixteen or seventeen separate contentions, but they
13 have to be read as a whole and they all sort of go
14 together as sub-parts of the same contention?

15 MS. OLSON: Indeed, indeed, indeed.

16 CHAIRMAN KARLIN: When we looked at
17 Contention Number 4, when I looked at Contention
18 Number 4, it seems to break out -- and this is the
19 way I think about it. Contention 4 and 4(a) is just
20 the introductory overview.

21 Then you've got a list of 4(b) to 4(k),
22 which are a bunch of specific, it appears to us,
23 examples, or illustrations, or instances of specific
24 and relatively different problems. And then you
25 have Contention 4(l) to 4(n), the first (n), (n-1),

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1 which are kind of: Based on all of the inadequacies
2 described above, we think the summary is inadequate,
3 or the mitigation is inadequate, or some other part
4 is inadequate.

5 MS. OLSON: Right.

6 CHAIRMAN KARLIN: And then you've got
7 Environmental Alternatives one 4(o) and then you've
8 got a 4(p), which is -- I guess it's "P", yeah, to
9 (n-2) which is the Clean Water Act 4041.

10 MS. OLSON: Indeed. So this is why it's
11 all got "4" in front of it.

12 CHAIRMAN KARLIN: Well, we're going to
13 take 4-0 and put that into Contentions 9 through 11,
14 because it seems to us that that goes with the
15 alternatives issue.

16 MS. OLSON: Good. I have no problem
17 with that.

18 CHAIRMAN KARLIN: So we don't want to
19 hear about that necessarily today. Save time on
20 that.

21 MS. OLSON: Okay. No problem. This is
22 the interlacing issue that I referred to in my
23 opening statement.

24 CHAIRMAN KARLIN: Right. Now, on
25 Contention Number -- I refer to your petition. Do

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1 you have your petition in front of you?

2 MS. OLSON: Yes.

3 CHAIRMAN KARLIN: On page 32, 33 --
4 let's see -- 34, 34 of your petition, you refer to
5 Table 4.61 of the LNP ER and you then have a page-
6 and-a-half which is their table.

7 MS. OLSON: Right.

8 ADMIN. JUDGE BARATTA: And they all say
9 -- and this is what the ER says, and it lists these
10 various categories of impacts. And they claim that
11 they are -- they say that they are all small with
12 two exceptions.

13 And at the end on page 35, after listing
14 all this, you say: "Granting a combined seal
15 allowing Progress Energy to construct would result
16 in threats of, you know," blah, blah, blah. And you
17 say that they would result in threats to wetlands,
18 blah, blah.

19 Isn't that a kind of conclusory
20 statement? What basis do you -- you have no basis
21 for that at this point. I guess we have to read the
22 rest of your contention or something. Is that the
23 theory?

24 MS. OLSON: Well, the fundamental issues
25 are about what happens to water when you put in all

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1 the amount of -- what is the word they use -- pad
2 and otherwise excavating this site and covering it
3 over. I mean, most of this -- not all of it but
4 most of it hinges on the whole issue of disrupting
5 the structure of the stuff below the ground. We see
6 the picture of where the trees are and were, but we
7 don't really have an ability to look into the ground
8 and see the relationship of this ground to springs,
9 to the wetlands, to the structures that Doctor
10 Bacchus is very familiar with.

11 ADMIN. JUDGE BARATTA: That's where I
12 really have a problem. I look at what you say and I
13 don't see any specific reference to any specific
14 hydrological structure, or geography, or geology of
15 this site. It appears that the discussions are
16 rather general.

17 And I'm having trouble rationalizing a
18 large impact, if I just look at the relative size of
19 the site, the relative size compared to the size of
20 the plant itself. And going from -- you know, I
21 don't know whether it is small or whether it is
22 large. I'm trying to understand how you manage to
23 get from their small to your large without taking
24 into account site-specific information.

25 MS. OLSON: And, indeed, I'm very happy

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1 that they've provided these pictures. Because in
2 this exhibit that we've added to the record today on
3 page three, we have the aerial view map of the site.
4 And the yellow boundary area is the projected -- the
5 boundary of the projected Levy 1 and 2 site.

6 And off to the upper left -- I'm not
7 local enough to be able to precisely position this;
8 I think it's pretty much up into the fold -- but one
9 of my concerned citizens in the room confirmed that
10 that is the area for the proposed mines, which is a
11 separate proceeding. But the local concern is that
12 that mining operation is, in part, driven by the
13 very big local customer across the street.

14 And so if we're going to talk about the
15 impact of building Levy 1 and 2, we really
16 appropriately need to talk about all of those
17 impacts in terms of where are they going to get the
18 stuff to do the rolled concrete; where are they
19 going to get the stuff to do the fill?

20 Well, the likelihood is they're going to
21 get it right across the street. And by the time you
22 start doing the level of excavation for both sites,
23 it becomes a large impact.

24 ADMIN. JUDGE BARATTA: That's an
25 assumption on your part. I mean, where is it in the

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1 record that they have stated that they're going to
2 do that? I mean, you could say the same thing for
3 an alternative. For example, where are they going
4 to get the plastic to make the pipe that goes into a
5 solar hot water heater? Are we going to be buying
6 it from Saudi Arabia, which has all sorts of
7 implications relative to transport, and global
8 warming, et cetera.

9 MS. OLSON: Well, I think the local
10 people I'm here to speak on behalf of would love to
11 hear, you know, what is the plan in detail and the
12 environment report doesn't provide it. And yes, we
13 are raising concerns; and no, we don't have the
14 answers to them because it is not our environment
15 report.

16 CHAIRMAN KARLIN: On page thirty-five,
17 Contention 4(b). The contention talks about
18 constructing in flood plains.

19 MS. OLSON: I think we have different
20 page numbers. I'm sorry.

21 CHAIRMAN KARLIN: I'm sorry. Thirty-
22 five. Did I say thirty-five?

23 MS. OLSON: You said thirty-five, but I
24 think that maybe you have -

25 CHAIRMAN KARLIN: Well, my page thirty-

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1 five is Contention 4(b). Maybe in pagination and
2 printing this electronic thing came out differently.

3 MS. OLSON: Thank you. 4(b).

4 CHAIRMAN KARLIN: The contention says
5 constructing in flood plains. The ER failed to
6 address the effects of constructing within a flood
7 plain. And then I go to page thirty-six, at the
8 bottom, four or five lines from the bottom. And it
9 says: ER failed to identify the source of this
10 significant aggregate fill. And then you started
11 talking about the source of the aggregate fill. You
12 know, the ER failed -- this is what you were just
13 discussing with Doctor Baratta, ADMIN. JUDGE
14 BARATTA.

15 Then I want to go to Contention 4©).
16 4©) talks about additional mining for the production
17 of raw materials such as aggregate for concrete.

18 Is 4(b), are you complaining about the
19 construction in a wetland or are you complaining
20 about the mining for aggregate fill?

21 MS. OLSON: Both.

22 CHAIRMAN KARLIN: Okay. Well -- okay.
23 That clarifies -

24 MS. OLSON: You wanted particularity so
25 we -- this is why it's sort of spread around,

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1 because they are particularly different points.

2 CHAIRMAN KARLIN: Well, okay. Let's go
3 to Contention 4(b), then. At the top of -- at the
4 bottom of thirty-five you say: "The ER failed to
5 talk about constructing within a flood plain."

6 Then on page thirty-six you have
7 explanation of basis. You say: "Increasing
8 elevations, the ER says it will be constructed in
9 the flood zone. Exhibit C confirms a majority of
10 the site is within six miles of the vicinity of the
11 flood zone. The ground elevation would be, you
12 know, nine feet higher than existing level. The
13 plant site is described as approximately this many
14 acres." And that's all you say.

15 Those are facts. What is the problem
16 with regard to constructing in flood plains? I'm
17 not sure what the graven, what your problem is.
18 Yes, they're going to construct; it's going to be
19 constructed. What did they miss?

20 Is there something defective in the ER,
21 the environmental report? What is defective in the
22 ER? What is the problem? They need to know what
23 the problem is so they can respond and say, "Yes, we
24 did," or "No, we didn't," or "Yes, it was adequate,"
25 or "No, it wasn't."

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1 MS. OLSON: Okay. Here we go on page
2 thirty-seven. Published literature describing
3 environmental impacts for mining, the mechanisms by
4 which mining irreversibly alters the natural hydro
5 period in the vicinity surrounding the mines, et
6 cetera, et cetera.

7 CHAIRMAN KARLIN: Right.

8 MS. OLSON: And she's --

9 CHAIRMAN KARLIN: Hold on a second.. Oh,
10 could you slow down as well?

11 MS. OLSON: I'm sorry. I'm reading. I
12 will read more slowly.

13 CHAIRMAN KARLIN: Well, let me break
14 that up. On page -- where you're reading, page
15 thirty-seven, it's all mining, mining, mining. It's
16 not constructing in the flood plain. It is mining.
17 So, I see -- well, I read Contention 4-B as mostly
18 mining for aggregate fill, not constructing in a
19 flood plain. See, all this is mining stuff.

20 MS. OLSON: Well, this is -

21 CHAIRMAN KARLIN: There is nothing wrong
22 with that. I mean, it might be a good contention.

23 MS. OLSON: Yeah, but what I want to
24 just say right now is that since we have this
25 situation where admissibility does have something to

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1 do with substance, and substance does have something
2 to do with the admissibility, I can't tell you what
3 a hydro period is. I don't know whether it has
4 anything to do with the hundred year flood plain
5 impacts, if you've changed that. That's the kind of
6 thing that I would need Dr. Bacchus. Perhaps Dr.
7 Murphy could reflect and educate us.

8 I'm sorry, I can't provide that. But I
9 can provide a deep and abiding concern on the part
10 of a hydro ecologist and the local people. And I
11 think I want to underscore the fact that, you know,
12 in the last round of building reactors about half of
13 them were canceled before they ever went on line.
14 These kind of impacts are going to happen whether
15 this thing ever produces a drop of electricity or
16 not, if the large major construction goes on.

17 CHAIRMAN KARLIN: Well, I'm just trying
18 to understand whether this contention deals with
19 construction in a flood plain or mining for fill.
20 And you say both, but all I see really is the mining
21 discussion.

22 And that's fine. You know, that's
23 related to this 4©), which is also mining. One of
24 them seems to be mining for aggregate fill and one
25 seems to be mining for aggregate for concrete. I

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1 can understand that that's what appears to be the
2 nuance between the two.

3 MS. OLSON: Right. And what I cannot
4 stand here and with any veracity tell you is how and
5 why altering a flood plain, which I believe is the
6 assertion here, will impact the overall hydro
7 ecology and health of water in this area.

8 CHAIRMAN KARLIN: Well, let me ask on
9 the mining. Let's assume, just as I understand
10 these contentions, they say: Well, look, they're
11 going to have to get this aggregate from somewhere.
12 We don't know where it's going to come from but it
13 has to come from somewhere. And the mining for that
14 aggregate is going to have an environmental impact,
15 you assert or suppose.

16 And therefore, the environmental report
17 needs to address the environmental impact of the off
18 site mining that's going to necessarily have to
19 occur in order to get the material to bring to the
20 site. Right?

21 MS. OLSON: Indeed. And since there is
22 a current pending application for one across the
23 street, the locals feel there is a relationship
24 between those two applications.

25 CHAIRMAN KARLIN: Yeah. I don't know

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1 whether it is the one across the street, and we
2 certainly can't -- don't have anything in this
3 record that would support where it is coming from.

4 That's not my question. My question is:
5 Under NEPA, under environmental reports, under the
6 Regs, they're supposed to discuss all environmental
7 impacts within rule of reason in proportion to their
8 impact. And this is Dr. Baratta's question is, how
9 far do you carry that?

10 I think their answer is this is of minor
11 significance. It's something that -- we don't have
12 to cover every impact of the purchase of pipeline,
13 of the purchase of gasoline as manufactured and so
14 and so. Where is the line drawn between things that
15 are too attenuated and things that are immediate
16 impacts? Are these too attenuated? Do you know of
17 any other environmental impact reports where they
18 have discussed the mining for the raw materials for
19 a proposed site?

20 MS. OLSON: Well, yes. The Uranium
21 Shoals Cycle discusses the mining of uranium for the
22 licensing of reactors in a generic way. The reason
23 this is a site-specific situation, it is actually
24 referenced in this material about this other
25 proceeding that is not under your jurisdiction. But

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1 we feel it is a somewhat disingenuous moment for
2 Progress Energy Florida to put this big proposal
3 right across the street from an aggregate mine and
4 not consider that that is a local impact of doing
5 this project.

6 CHAIRMAN KARLIN: Because the Regs - and
7 I'll you, 541.45(b). Do you have the Regs?

8 MS. OLSON: I don't. I'm sorry.
9 They're on my computer which is in the trunk of my
10 car because it was pouring rain when I got out of
11 it.

12 CHAIRMAN KARLIN: Well, it says:
13 Environmental impact shall be discussed in
14 proportion to their significance.

15 Are you asserting that this mining is of
16 sufficient significance that it needs to be
17 discussed?

18 MS. OLSON: Yes.

19 CHAIRMAN KARLIN: Okay. All right. I
20 think this is part of the issue. Is it too remote
21 or not? This is what we're grappling with and
22 trying to understand.

23 MS. OLSON: Again, I'm a plain speaker
24 but in this century, water is going to be the new
25 oil. And we're talking fresh water in an area with

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1 incursion as a possibility from this project. We
2 don't go into a lot of that but the recharge of
3 ground water from this area is something that should
4 be really looked at.

5 CHAIRMAN KARLIN: Well, thank you. I
6 have thought about this contention in some detail
7 and the important issues, which I well recognize
8 there are many connected issues that might
9 potentially affect the environment.

10 But I echo some of my concerns, or some
11 of the statements that have been made regarding how
12 one distinguishes between a small effect or a big
13 effect. And the controversy or the difference of
14 opinions here seems to be that the Applicant says
15 that the ecological and other hydro geological
16 effects are small, and the Petitioners say that they
17 are large.

18 And that is an issue for us to
19 contemplate in judging the admissibility of the
20 contention, in my view.

21 I'm interested in using the data that,
22 and looking at the data that might bear on that
23 question of what's big or small. And I've taken
24 note of Dr. Bacchus' literature, and I see that
25 certainly there is potential in some cases for there

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1 to be big effects.

2 I wonder if you have data, for example,
3 on the existing gravel plant. Has it had an
4 environmental effect? Has it had an effect on the
5 hydro period of the environment or on the ecology of
6 the environment? That seems to me to be a very,
7 could provide a very direct line of evidence for
8 whether or not these are big or small effects.

9 Do you have any information concerning
10 that that would bear on the question?

11 MS. OLSON: It is my understanding that
12 Dr. Bacchus is engaged in a different proceeding,
13 having specifically to do with the gravel
14 development in this area. So I believe she would be
15 a, you know, fertile, shall I say, resource for
16 answering those questions. I do not, myself, have
17 that data, no. But I think that it is certainly a
18 very good question and we can ask her. And I would
19 hope that the Board will, itself, ask her.

20 One thing I want to say is that I think
21 there's a tendency that's natural enough to weigh
22 size of impact in relation to what? Right?
23 Relative to what?

24 And I really want to impress upon people
25 that this contention and Contention 3 interlace.

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1 Because if you go and you do all this disturbance to
2 this environment and you never get any positive
3 benefit from it, try weighing the Contention 4 in
4 relation to that, rather than in relation to, you
5 know, PEF gets everything they say they're going to
6 get. I mean, you have to really look at that. Half
7 of them got canceled.

8 ADMIN. JUDGE BARATTA: One thing I
9 wanted to ask, because it was challenged by the
10 Applicant, is your statement that the effect that
11 approximately 121 hectare acres or 300 acres at the
12 Levy site are going to be raised by this aggregate.
13 And they questioned that.

14 Was that a mis-reading of what they were
15 saying? Because it appeared that they were implying
16 that the amount of area that would be raised above
17 the flood plain would be the area immediately around
18 the containment building and the turbine building.
19 In other words, again going back to their picture,
20 that small blue site, blue area within the larger
21 blue site as opposed to -

22 MS. OLSON: You want to direct me to a
23 page here?

24 ADMIN. JUDGE MURPHY: Yes. If you go to
25 their exhibit, I guess page three, and you look at

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1 where it says Unit 1 and Unit 2 directly. And then
2 you can go to page four, which is a blow-up of
3 that. They took issue with your point about 300
4 acres, saying it was only the area immediately
5 around the units that would be disturbed, or raised,
6 I should say.

7 MS. OLSON: This raises a new question
8 in my mind. Forgive me for speaking it, but is NRC
9 going to let them do it without raising the road,
10 and the egress and access? I mean, why do you
11 raise? I mean, you raise because you're in a flood
12 plain. Right?

13 ADMIN. JUDGE BARATTA: You raise because
14 you have to provide certain safety features. Beyond
15 that --

16 CHAIRMAN KARLIN: Well, I think the
17 contention has articulated construction or raising
18 not just the pad for the reactor building but other
19 construction that's in the flood plain. I mean, I
20 think I see that.

21 ADMIN. JUDGE BARATTA: Well, I'm trying
22 to get to the issue, the aggregate. Because it
23 seems as though -

24 CHAIRMAN KARLIN: Yeah, the mining.

25 ADMIN. JUDGE BARATTA: The mining,

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1 because that's related to the amount of aggregate
2 that's required. Okay? And what I think the
3 Applicant is saying is that the -- well, they said:
4 "The surface area to be impacted is a fraction of
5 the 300 acres alleged by the Petitioner."

6 Which clearly then says that the amount
7 of aggregate that would be required is smaller --
8 I'm not saying it's small -- it's smaller than what
9 you seem to have implied in your contention, which
10 tends to drive away from the large impact towards a
11 small impact.

12 And I just wanted to see if there is a -
13 - if you really meant to say it was the entire 300
14 acres or what. That's what I'm trying to get at.

15 MS. OLSON: I'm not in the position to
16 affirmatively say absolutely they're going to raise
17 it all over the entire 300 acres. But I also know
18 that they don't provide us with any detail in their
19 environment report.

20 And I also know that when you come to a
21 detailed discussion of concern about flood plains, I
22 think there should be a lot of attention to it
23 because I was hiring independent flyovers by, you
24 know, people who care, with small planes, to monitor
25 the reactors that were in the huge Mississippi

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1 floods of the '90s. And they were completely
2 surrounded with absolutely no access by road. You
3 know, it's a very weird situation.

4 So I'm not saying that would happen
5 here, but I'm just saying that these are issues that
6 should be carefully examined. And if they are
7 examined and found to be needing more fill, then the
8 impact will be greater.

9 CHAIRMAN KARLIN: If I may go to
10 Contention 4(d).

11 MS. OLSON: Yes.

12 CHAIRMAN KARLIN: I think there's a
13 generic question or difficulty that this may
14 exemplify. Contention 4(d) on page forty of your
15 petition, as I have it, says -- Onsite Mining and
16 De-watering, is it's title. And it says: "The ER
17 failed to address adverse effects of onsite mining
18 excavation and de-watering to construct and
19 operate." So you allege that they failed to address
20 this subject.

21 And then your very next statement on
22 page forty, you say, in the environmental reports
23 discussion of de-watering they talk about it here.
24 And then on page forty-one, there is a long quote
25 from page 4.33 of the ER dealing with hydrologic

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1 alteration resulting from the construction. And in
2 the second paragraph of page forty-one, again a long
3 quote from the ER about de-watering.

4 So the Applicant comes back and says:
5 Well, what do you mean we failed to discuss this
6 issue? You're quoting us at length. We obviously
7 discussed this issue.

8 And the only thing I can -- and I think
9 they tried to grapple with this and I think the
10 thing I take away from that is what you're saying is
11 not so much saying they didn't discuss it, but they
12 didn't discuss it adequately, or they didn't discuss
13 it in the way or in the adequacy that you thought
14 they should've discussed it. It's not a contention
15 of omission, in a sense, but it's more a contention
16 of inadequate discussions.

17 MS. OLSON: Yeah, inadequate. But the
18 omission is these key words: Direct, indirect, and
19 cumulative. They describe it but they don't talk
20 about what those -- if you go and do it what does it
21 result in?

22 CHAIRMAN KARLIN: They didn't discuss it
23 in the level of detail in the specific of examples
24 you thought should've been covered.

25 MS. OLSON: Right, right.

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1 CHAIRMAN KARLIN: Okay. That's kind of
2 what I take away from that. I mean, because in a
3 number of your -- you have this sort of formulaic,
4 you know, Contention 4(d), Contention 4(e),
5 Contention 4(f). You know, failed to discuss. And
6 then, you know, when look, well, yes, there was some
7 discussion.

8 So you're not so much saying they didn't
9 discuss the topic; they didn't discuss the
10 specifics, or the detail, or the adequacy that you
11 were looking for, or you think should've been there.

12 MS. OLSON: Right. They are sort of
13 like you can describe in detail, you know, an
14 infection and what it looks like. But if you don't
15 talk about what it actually does to the entire body,
16 and the fever that it may be causing, and the
17 potential to disrupt organ functions if it goes long
18 enough, then you've kind of missed it if you've just
19 kind of describe the cut, and the redness, and the
20 pus.

21 CHAIRMAN KARLIN: Okay.

22 MS. WRIGHT: Two minutes.

23 MS. OLSON: Did you hear her? I heard
24 her.

25 CHAIRMAN KARLIN: And then on the de-

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1 watering, 4(d), I mean, I see that you've got a
2 number of contentions that sort of deal with de-
3 watering. They are sort of a cluster of contentions
4 that deal with watering, de-watering. 4(e) deals
5 with the Floridian aquifer system and the
6 connections to the relic sinkholes. And 4(f) deals
7 with the outstanding waters and that sort of thing.
8 Okay.

9 MS. OLSON: And we do take exception, by
10 the way, with the idea that there are not special
11 waters. There are special waters. And I'm here in
12 part on their behalf as well as my human members.

13 CHAIRMAN KARLIN: Okay. Is the de-
14 watering only a problem during construction or is it
15 --

16 MS. OLSON: Oh, no. This is --

17 CHAIRMAN KARLIN: How does that work?

18 MS. OLSON: Oh, you change the structure
19 of what is under the ground. And so the pathways
20 and ways in which the whole system interacts is
21 permanently changed. And that permanent change has
22 a cumulative ongoing impact.

23 CHAIRMAN KARLIN: Well, there is a
24 certain amount of de-watering that occurs when
25 you're pumping and pumping in order to build the

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1 footprint or the pad.

2 MS. OLSON: Yeah.

3 CHAIRMAN KARLIN: And once you're done
4 pumping, do they continuing pumping, or does the
5 pumping stop?

6 MS. OLSON: Well, but then you also have
7 the pervious/impervious surfaces and, you know,
8 there is a complex set of interacting things that
9 have to do with watering and de-watering.

10 CHAIRMAN KARLIN: When Dr. Bacchus
11 talked about non-mechanical de-watering, she means
12 like ponds that cause evaporation more rapidly than
13 it might otherwise occur or something?

14 MS. OLSON: Right, right.

15 ADMIN. JUDGE BARATTA: Again I refer
16 back to the issue of whether or not they are small
17 or large. And what I don't find so far is anything
18 that says why you think they are large. I see
19 issues being raised, which are very valid issues.
20 I'm not trying to downplay those because I know the
21 issue of pervious surfaces', impact on storm water
22 runoff, et cetera, are very significant issues.

23 And yet, again looking at the site, I'm
24 having trouble going from small to large based upon
25 what you are including. And we have some rules that

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1 require us to have more than just simply a statement
2 from an expert, but that it has to have some reason,
3 basis, or explanation to support that. And that's
4 what I haven't found here.

5 MS. OLSON: Again, I ask us all to
6 understand that this is really one big single
7 contention. That whole cloth lists things like the
8 potential for more fire in the area because of the
9 impact on the natural water. We have salt drift
10 issues that can kill vegetation that can change the
11 watering issues. We have construction in the flood
12 plain that can also have impacts that have not been
13 detailed. There is the removal of water from the
14 aquifer being talked about. There is a potential
15 for a lot of impacts associated with that.

16 Take it all together and, in our view,
17 the impact is large.

18 ADMIN. JUDGE BARATTA: What is the basis
19 for that? That's what I'm trying to get at. Any of
20 those things can happen. The question is: Do they
21 happen to a 100 square foot area --

22 MS. OLSON: Salt drift isn't --

23 ADMIN. JUDGE BARATTA: -- as a result of
24 the construction or do they happen to a hundred
25 square mile area, or something in between. And I --

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1 MS. OLSON: Well, Dr. Bacchus has listed
2 a number of parks, and public lands, and wildlife
3 areas towards the end of the contention that are
4 directly, in her view, subject to impact. She lists
5 the productive and valuable land resources; impact
6 on the food chain; general habitat and nesting;
7 sanctuaries and refuges of wildlife and plants;
8 drainage, salinity in terms of salt drift but also
9 potentially the incursion; natural flood water
10 storage; ground water discharge and re-charge; the
11 uniqueness of the waters that would be impacted.
12 And in her view, as an expert, when you take all of
13 those together, it is a large impact.

14 CHAIRMAN KARLIN: Time.

15 ADMIN. JUDGE MURPHY: Could I --

16 CHAIRMAN KARIN: Yeah, go ahead.

17 ADMIN. JUDGE MURPHY: You're calling
18 time on the Petitioner?

19 CHAIRMAN KARLIN: That's your thirty
20 minutes. We can ask some more later, or you can ask
21 it now.

22 ADMIN. JUDGE MURPHY: Okay. I would --
23 while it's in context, I have one specific question
24 that relates to the ongoing discussion. And I've
25 looked at Dr. Bacchus' literature on de-watering on

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1 other sites. And, as I said before, clearly there
2 is the potential for big effects in other areas.
3 And I see good peer reviewed literature supporting
4 some of that information.

5 However, I failed to see in the
6 petition, references to literature on the adverse
7 ecological effects of salt drift, other than the
8 declaration of Dr. Bacchus'. Have I missed
9 something? Is there a literature on this that's
10 referenced or that I'm unaware of that you may help
11 me find?

12 MS. OLSON: I think we can help you find
13 it. I don't know that we've referenced it, and I
14 don't spare the effort to help find that.

15 CHAIRMAN KARLIN: Well, if you can't
16 help us find it today then we're not going to find
17 it, because today is the only day we've got.

18 MS. OLSON: I understand.

19 CHAIRMAN KARLIN: Why don't we call that
20 time, and maybe you can think about that. And when
21 you come back for rebuttal you might have that or we
22 might not. Thank you.

23 MS. OLSON: Thank you.

24 CHAIRMAN KARLIN: Mr. O'Neill, fifty
25 minutes.

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1 COURT REPORTER: May I change a file
2 real quick?

3 CHAIRMAN KARLIN: Yes. The Court
4 Reporter needs to change her tapes or something, so
5 please hold on for a second.

6 MR. O'NEILL: Absolutely.

7 (Brief pause off the record.)

8 CHAIRMAN KARLIN: Okay. Fifty minutes,
9 Mr. O'Neill. Proceed.

10 MR. O'NEILL: Mr. Chairman, Dr. Baratta
11 and Dr. Murphy, if you will indulge me I would like
12 to take perhaps five minutes to address some issues
13 that I thought were important to clarify. And,
14 indeed, your questions confirm the confusion that we
15 had. And I hope to clear at least some of the
16 facts, then we will go forward on.

17 After that, I am prepared to address
18 that I haven't had a chance to reply to. But I
19 would much rather answer your questions, and I'll go
20 either way. I can keep going for fifty minutes, or
21 I can answer your questions. It's really up to you.

22 But if you will indulge me, I would like
23 to take about five minutes to talk about some
24 fundamental problems that we have.

25 As Ms. Olson said quite honestly,

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1 Contention 4 is a cut-and-paste from a declaration
2 of Dr. Sydney Bacchus. It's sole basis and support
3 is the declaration which turned into the contentions
4 that was reworked and certain documents cited
5 therein.

6 There has never been, that we can find,
7 an analysis of what information in the declaration
8 or the references applies to the proposed
9 contentions, or an explanation as to how it provides
10 basis and support for the allegations.

11 Mere reference to documents, Bacchus
12 Exhibit E, does not provide an adequate basis for a
13 contention. Dr. Murphy was reading the literature
14 and trying to figure it out, but that's not what a
15 contention is. It's not Applicant's responsibility
16 to infer how documents are intended to support a
17 contention. Indeed, at times, the NRC staff and
18 Applicant interpreted aspects of Contention 4
19 differently.

20 And as the Commission has stated
21 directly, and while I appreciate the Board trying to
22 help the pro se Petitioner, a licensing Board is not
23 to make inferences on the Petitioner's behalf nor
24 assume the existence of missing information.

25 And I'm not saying you were doing that,

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1 but I'm saying you were asking questions to try to
2 get to what we did not find either.

3 Neither the declaration nor the papers
4 cited by Dr. Bacchus address the actual activities
5 to be conducted at Levy in the construction and
6 operation of the AP-1000 nuclear units. There will
7 be no mining activities at the Levy site. There is
8 noting in the ER or in the COLA that suggests there
9 will be. I'll get to the excavation in a second,
10 but certainly not mining.

11 CHAIRMAN KARLIN: Well, why does it have
12 to be? Just because it's not going to be at the
13 Levy site, let's say there's an enormous amount of
14 mining -- let's posit. There is an enormous amount
15 of mining that need to be done to get the fill and
16 the other materials. Is that, per se, outside of
17 the scope of an environmental report or an EIS, just
18 because it's off site?

19 MR. O'NEILL: If, in fact, this was some
20 different project and you were going to open a mine
21 that had 22,000 acres, such as in Dr. Bacchus'
22 reference, that would have non-mechanical de-
23 watering over a period of decades, then perhaps it
24 is going to cause some impact.

25 CHAIRMAN KARLIN: No, I'm not talking

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1 about opening the mine. For example, when I was at
2 Shell Oil Company for seven years, we had a coal-
3 fired boiler that we were applying for in
4 California. And they required us, in the
5 Environmental Impact Report, to cover the source of
6 the coal that we were going to be using at the coal-
7 fired boiler. Even though that was in Nevada, the
8 EIS had to cover the mine. Where were we going to
9 get the coal from and what the impacts were.

10 So are you suggesting that, per se, just
11 because this occurs off site it is excluded and
12 doesn't need to be covered?

13 MR. O'NEILL: Per se, certainly not,
14 Your Honor.

15 CHAIRMAN KARLIN: Okay.

16 MR. O'NEILL: Per se, certainly not.

17 ADMIN. JUDGE MURPHY: I would like to
18 follow up on that a little bit because I was a
19 little mystified by a statement that, quote, "The
20 application states that the construction of Levy is
21 not anticipated to the require expansion of any
22 mine."

23 And that is a citation to the
24 environmental report at page 410. And I tried to
25 comprehend that, that no mine would require any

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1 expansion. And I thought perhaps the problem was
2 related to this distinction that you draw sometimes
3 between construction and pre-construction.

4 Are you trying to say here that during
5 construction there would be no mining, but it would
6 all be pre-construction? Or are you really -- can I
7 take the environmental report literally to mean that
8 the construction of Levy is anticipated not to
9 require expansion of any mine?

10 MR. O'NEILL: Literally. And we're
11 talking about pre-construction, construction. The
12 amount of concrete that will be used at this plant
13 in connection with the amount of concrete used in
14 Florida, much less beyond that, is so small. I mean,
15 as you drove here and saw these massive flyovers in
16 the construction of our highways, there is really
17 very little aggregate -- we're talking aggregate is
18 the only issue here -- very little because you're
19 not using aggregate for fill anywhere. That's dirt.

20 So to the extent -- and I was going to
21 get into this and I'll show you the pictures. But
22 to the extent that they're talking about fill, it's
23 dirt. There is a lot of dirt. If you drove up here
24 you saw big piles of dirt. That might be the dirt
25 they use. We don't know yet. It's many years off.

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1 But that's just fill dirt. That's not
2 in this contention. That's a mistake. The number
3 of acres being used, we pointed out in our answer,
4 that's a mistake.

5 So Contention 3(b) really factually is
6 wrong. Let's look at 3(c), which is aggregate.

7 CHAIRMAN KARLIN: Well, wait a second.
8 How do we know that factually at this point? I
9 mean, isn't that for the merits?

10 MR. O'NEILL: No, it's not for the
11 merits. I mean, remember, our contention cannot be
12 based on false information. You go into the ER and
13 we cite the section of the ER, 4-6, which talks
14 about fill and talks about where fill will be in the
15 flood plains, there is no mention of aggregate.

16 CHAIRMAN KARLIN: Well, let me just ask.

17 MR. O'NEILL: And you don't use
18 aggregate for fill.

19 CHAIRMAN KARLIN: Let me just ask. Will
20 the concrete use aggregate?

21 MR. O'NEILL: Oh, when we get to
22 concrete -

23 CHAIRMAN KARLIN: I mean, 4(d), there's
24 going to be aggregate used in the concrete, I
25 suppose.

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1 MR. O'NEILL: No. 40), I believe, is
2 the one that talks about aggregate.

3 CHAIRMAN KARLIN: Okay. You're right.
4 Let's go with that. But there's going to be
5 aggregate used.

6 MR. O'NEILL: Roller compacted concrete.

7 CHAIRMAN KARLIN: And what is -- and
8 that concrete includes aggregate. Right?

9 MR. O'NEILL: Right.

10 CHAIRMAN KARLIN: So aggregate is going
11 to have to come from somewhere.

12 MR. O'NEILL: But let's look at it for
13 just a second.

14 CHAIRMAN KARLIN: Okay.

15 MR. O'NEILL: On page seven of exhibit--

16 CHAIRMAN KARLIN: Well, again, we're
17 dealing with the pleadings, the pleadings as they've
18 been filed.

19 MR. O'NEILL: Well, the pleadings talk
20 in great detail about roller-compacted concrete, but
21 I wanted to show you visually.

22 CHAIRMAN KARLIN: And concrete includes
23 aggregate.

24 MR. O'NEILL: It concludes aggregate.

25 CHAIRMAN KARLIN: So, it's a question

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1 not so much of whether it comes from off site or on
2 site, it's how much and whether it's too remote, or
3 too attenuated, or too insignificant to be
4 reasonably included, to be reasonably of concern in
5 this ER. That's the way I look at it. Not that
6 it's off site, therefore we don't have to look at
7 it.

8 MR. O'NEILL: Absolutely. And the
9 amount, if you look at page seven of the exhibit,
10 shows you the little pad of roller-compacted
11 concrete at the bridging mat. Remember, this is all
12 about fill. So what fill has aggregate in it? The
13 RCC, as we point out in our pleading, is the only
14 fill that has aggregate in it. This is very special
15 aggregate that will meet the specifications in the
16 batch plant for concrete to produce this roller-
17 compacted concrete.

18 That is a very small area, .88 acres,
19 thirty-five foot mat. That is a very small amount
20 of concrete in the scheme of things. That is where
21 the aggregate will come up for fill.

22 To be sure, there will be concrete for
23 the containment and concrete for the structures.
24 That isn't an issue by the way it was raised. They
25 just raised fill and that's all we're talking about.

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1 They did not say there's going to be aggregate used
2 for concrete generally. But, of course, there is.
3 There will be aggregate used for concrete generally.

4 But we never saw is what is the
5 significance. We don't know where we are going to
6 buy it. We will go out for bid and it may be barged
7 in from someplace else. We don't know.

8 But it is, in the scheme of things, such
9 a very small percent of the aggregate. - It's like
10 the entire supply chain for a nuclear plant. This
11 is not like coal, which is going to be massive
12 amounts that will be used to fire a plant forever.
13 This is a small amount of concrete in the scheme of
14 things, and is not going to change anything.

15 If you had an alternative of a coal
16 plant, you would use just as much. If you had an
17 alternative of solar, you would be buying, as Dr.
18 Baratta said, a lot of PVC piping.

19 NEPA does not require that kind of chain
20 to be analyzed. Never has and certainly isn't,
21 unless it is a major impact. And as Ms. Olson
22 points out, certainly uranium, which is the fuel
23 cycle for sixty years for this plant, perhaps, and
24 the Commission has done that.

25 But this is not significant. And more

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1 importantly, there is nothing in the contention that
2 suggests it is, except to the extent it was 300
3 acres of fill. Not true. Okay? It's only that one
4 -- there's two of them, by the way, one for each
5 reactor. That .88 acres, thirty-five feet of roller
6 compacted concrete is the only, quote, fill that
7 will be used at that site. That's why there's
8 nothing really to talk about. What would we say?

9 CHAIRMAN KARLIN: Well, let me ask you
10 the same question. I think I asked this of Ms.
11 Olson, and perhaps you can help.

12 In the Regs 51.45, that's the one, one
13 of them that talks about what needs to be in the
14 environmental report. And it says, and I'm sure
15 you've thought about this: The environmental report
16 needs to include -- discuss the following
17 considerations. The impact of the proposed actions
18 on the environment. And then it says: Impacts
19 shall be discussed in proportion to their
20 significance.

21 What is the relevant case law or law
22 that we should use in making this cut. I mean, or
23 is it a contention that's admissible. Well, you say
24 it is insignificant; they say it is significant. Do
25 we admit it and say: Okay. Well, there is a

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1 contention there. We don't know whether it is
2 significant or not. Or if we can throw it out at
3 this stage, which you are suggesting we should do,
4 on what basis, what law, what basis do we do that?

5 MR. O'NEILL: They have the burden.
6 Their burden is to state an admissible contention.
7 3(b) has a series of facts that are flat wrong.
8 There is no aggregate fill that's going to be over
9 300 acres for nine feet.

10 CHAIRMAN KARLIN: Well, I don't think
11 they said 300 acres. I've read it and I didn't see
12 them say that. I think they said aggregate fill,
13 and they said the aggregate for concrete. Let's say
14 aggregate fill is out. Let's just say aggregate for
15 concrete.

16 Again, my question is, you're arguing
17 about whether it is significant or not. They say it
18 is; you say it isn't. Do we admit the contention
19 and say: Well, okay, we'll have a merits hearing on
20 that, or do we throw it out. And if we throw it
21 out, what grounds -- are we getting to the merits
22 when we throw it out?

23 MR. O'NEILL: No, we're getting to who
24 has the burden of going forward. And we have no
25 basis for this being an impact that needs to be

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1 considered.

2 CHAIRMAN KARLIN: Well, wait a second.
3 Basis. What do the Regs say about basis? All they
4 have to do is provide a concise explanation of the
5 basis of their contention which, as I read it, the
6 basis is the reason, the theory, the concept.

7 They don't have to provide, under that
8 Section, (ii), any facts, any expert, anything else.
9 A brief explanation of the theory of their case and
10 they have done that. I mean, you may not agree with
11 them and they may not meet some of the other
12 criteria. But haven't they done that, a brief
13 explanation of the theory of their case?

14 MR. O'NEILL: Well, the theory that this
15 is going to cause an environmental impact I have not
16 seen, because it was based on assumptions there was
17 going to be a massive -- remember the contention
18 talks about a massive amount of concrete. You know,
19 that's not there. So that was their predicate. The
20 predicate is wrong.

21 But let's then go to the next reason,
22 which is ultimately there is no support for an
23 environmental impact that would be in any way
24 significant. This is not something that the very
25 detailed environmental -- the staff's guidelines on

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1 preparing the ER would require you to go to this
2 level of detail because we know it is not
3 significant.

4 So if the Intervener wants us to take a
5 -- you know, have to go back and provide that
6 information, assuming that they didn't have a
7 predicate that was incorrect in the first place and
8 that they think this amount of aggregate somehow is
9 an environmental impact, they have to give us some
10 expert report, some support for our going back and
11 getting that information. I don't see it.

12 CHAIRMAN KARLIN: Well, let's turn to
13 page eighty of your brief, please. In here you are
14 focusing on the concern that I have which is, are we
15 talking about -- it's a question of significance,
16 importance, proportionality, rule of reason, and you
17 provide a discussion of that. And this is not the
18 only place where you do that.

19 But you say: "Because the amount of
20 concrete required for the construction of Levy is
21 minimal in comparison to the availability of
22 concrete in the national or global market."

23 Now, are you really suggesting that the
24 relevant benchmark for the amount of concrete is the
25 global use of concrete versus this particular site?

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1 MR. O'NEILL: I started with national.
2 And if you will look at Florida, it's the same
3 answer.

4 CHAIRMAN KARLIN: I mean, I don't know
5 whether it is county, or Florida, or global. But, I
6 mean, you know, come on.

7 MR. O'NEILL: In any event, the point is
8 that there has been no attempt at showing that it is
9 significant, and no expert report, expert study, or
10 any of the basis to support that it is significant.

11 CHAIRMAN KARLIN: Well, they don't need
12 an expert report to support a contention, do they?

13 MR. O'NEILL: Well, they certainly --

14 CHAIRMAN KARLIN: Does the Reg require
15 an expert report?

16 MR. O'NEILL: No, but it requires that
17 there be some support that they can point to that we
18 can understand.

19 CHAIRMAN KARLIN: The Reg requires
20 alleged facts or expert opinion. I think your brief
21 is grievously misstated in a number of cases when
22 you say: "They have failed to provide facts or
23 expert opinion."

24 The Regs don't require that, in that
25 Reg, anyway. They say alleged facts. Alleged facts

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1 I think are significantly different and I think it's
2 important when a party is represented by expert
3 counsel, as you are, and your firm is, please try to
4 hue close to the Regs because these are pro se
5 people.

6 MR. O'NEILL: I think also that if you
7 show that the, quote, "alleged facts simply are
8 inconsistent with the facts in the COLA," you do not
9 have to have a contention on that. I there is -- I
10 can't remember the case law that supports that.

11 CHAIRMAN KARLIN: Are we saying that
12 anything that's in the COLA is obviously right, and
13 anything they allege is obviously wrong?

14 MR. O'NEILL: Unless they have some
15 basis for the allegation, certainly. We go through
16 this --

17 CHAIRMAN KARLIN: I don't understand
18 that. We don't automatically posit that everything
19 in the ER has got to be right. They are contesting
20 what's in the ER. They are saying it's wrong;
21 they're saying it's inadequate. Now, I grant you,
22 they need to say why it is inadequate or how it is
23 inadequate and maybe they haven't done that. But
24 just because it's in the ER is not the end of the
25 discussion, to me.

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1 MR. O'NEILL: Certainly there are facts
2 and there are opinions. There is, for example, as
3 you point out, small versus large. That is an
4 opinion based on an objective standard, to be sure.
5 And the objective standard is in the CEQ guidelines
6 that they point out. And large, for example, is for
7 the issue from the CEQ guidelines. Effects are
8 clearly noticeable and are sufficient to destabilize
9 important attributes of the resource.

10 CHAIRMAN KARLIN: Well, that's my next
11 question. The resource. Is the resource the globe,
12 or is it the nation, or is it, you know, Levy
13 County, or is it -- help with that. No, I really
14 need help on that.

15 The criteria for large, medium, small
16 are, you know, relevant to how it impacts the
17 resource. What is the NRC case or the NEPA case law
18 that helps us define -- if the resource is defined
19 as a small localized area, the impact could be
20 larger. If it is defined as the state of Florida or
21 some huge area relative to that resource it's de
22 minimus. What law is there, or help is there in
23 that word, "the resource"? Is there anything that
24 helps us with that?

25 MR. O'NEILL: That's a good question and

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1 I can't give you one off the top of my head. I will
2 be honest. But I will try to give you one tomorrow.

3 CHAIRMAN KARLIN: Okay.

4 ADMIN. JUDGE BARATTA: I have a question
5 about something you said in your reply brief. You
6 cite *USEC*, I believe it is, in regards to something
7 to the effect that even the opinion of a qualified
8 and properly identified expert will not support a
9 contention if the opinion lacks a reasoned basis or
10 explanation.

11 MR. O'NEILL: That is the statement in
12 that case. And I understand that the -- in that
13 case, it might have been the egregious one where the
14 expert's language challenges came up with a report
15 that was hard to understand. So --

16 CHAIRMAN KARLIN: Which case was that?

17 MR. O'NEILL: The USEC case.

18 ADMIN. JUDGE BARATTA: USEC. It's in
19 CLI06-10.

20 MR. O'NEILL: But I believe that the
21 principal was that you can't have an expert saying:
22 I have read the environmental report. I have looked
23 at this table and, while the Applicant says that
24 this will be a small impact, I'm an expert and I say
25 it's large. Then we're off on a contention. Not

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1 true.

2 Exactly as we've been discussing, the
3 expert must take and give us some basis, some
4 analysis to support: I say large, you say small.
5 Not just: I'm an expert; here's my pedigree; we have
6 a contention.

7 That is what I believe that that case
8 stands for. And if it didn't stand for that, we
9 would have hundreds and hundreds of contentions just
10 by having someone saying: I'm an expert and I
11 disagree with this, I disagree with that, I disagree
12 with that, I disagree with that.

13 You have to have an analysis to say: I
14 disagree with that because, and here's my analysis.

15 ADMIN. JUDGE BARATTA: I would like to
16 kind of change horses and go now to something that
17 you say, which appears, I believe it is, on page
18 eighty-five.

19 You have a discussion of the impact of
20 de-watering. And you say that de-watering for the
21 nuclear island foundation will be required and that
22 you will be intermittently pumping. I'm going to
23 paraphrase it rather than read it all in the record.

24 MR. O'NEILL: Right.

25 ADMIN. JUDGE BARATTA: And then you go

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1 on. It says: They will be monitored and controlled
2 using Florida BMP selection and implementation for
3 sediment control. Proper safeguard will be
4 implemented to prevent long-term effects on local
5 habitats from construction activities. Potential
6 long-term impacts on the ground water levels from
7 de-watering are anticipated to be small.

8 Isn't that the issue that the
9 Interveners are raising? In other words, I read
10 this and it would seem, at least on the surface,
11 that we have a dispute here. How do I know that
12 those were proper safeguards, or that they are
13 adequate to prevent long-term effects?

14 MR. O'NEILL: Well, first of all, that
15 is not what the Interveners are raising, to be
16 honest. The Interveners are talking about mining
17 and digging a big pit which gets down to the
18 aquifer. That's what their contention is all about.
19 All of their support, these papers that I believe
20 Dr. Murphy referred to, looking at the literature,
21 was about large pits that are open with large lakes
22 that are by non-mechanical de-watering.

23 And what our first point is, and there
24 is de-watering and there is de-watering, is that
25 what we're going to do to excavate Levy is to dig

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1 one excavation that will not be a big pit because
2 you can't excavate in Florida because the water
3 floods up.

4 So look at, please -- that's why I did
5 this -- page seven of our exhibit again. Because
6 this is important and this is one of the things I
7 was going to address before we went off in other
8 areas.

9 How this excavation will occur --
10 there's been actually two presentations to the NRC
11 staff on this by our experts -- is to one, step one,
12 is you grout the .88 acres by inserting grouting as
13 you see below into the limestone to fill in the gaps
14 so that water will not come up and fill the pit as
15 fast as you excavate.

16 Secondly, you put a reinforced diaphragm
17 wall all around that .88 acres. That creates what
18 we call the sides of the bathtub.

19 So the de-watering that will occur will
20 be to mechanically pump out anything that seeps
21 through the wall or seeps through the grout
22 underneath it.

23 That is the de-watering that we're
24 talking about there, which will also be done, by the
25 way, according to the guidelines. But there is not

1 a connection to the aquifer in the way this will be
2 excavated, which is the point that the Petitioner's
3 are concerned about because that's what Dr. Bacchus'
4 research is all about, which is the non-mechanical
5 de-watering.

6 And, secondly, it will only be open for
7 a short period of time until we put in the RCC and
8 build it back up.

9 So, once again, these are the facts that
10 we can't dispute. There's no mining and there is --
11 the excavation is limited. It does not connect to
12 the aquifer and you're not going to get --

13 CHAIRMAN KARLIN: What do you mean
14 there's no mining? I thought we established there's
15 going to be aggregate needed for the concrete and
16 that needs to be mined somewhere.

17 MR. O'NEILL: That's ©). We're talking
18 about (d), Your Honor. That's why I'm trying to
19 keep them separate. But yes.

20 CHAIRMAN KARLIN: But the mining
21 contentions are (b) and ©). And you say there's no
22 mining, and we're going to go: Oh, well. (b) and
23 ©) are out.

24 MR. O'NEILL: No. (d) also says there
25 is mining, and I said there's no mining when I refer

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1 now to (d). To the extent there is mining, yes, it

2 --

3 CHAIRMAN KARLIN: There is no digging
4 of a hole here?

5 MR. O'NEILL: There is an excavation, as
6 I just pointed out, which is not mining, per se.
7 And it is immediately filled in so there is no non-
8 mechanical de-watering. It's not going to happen.
9 It can't happen.

10 CHAIRMAN KARLIN: Well, digging of a
11 hole, mining, you know, I'm not sure --

12 MR. O'NEILL: I think excavation is
13 different than mining by a lot.

14 CHAIRMAN KARLIN: Mining is usually for
15 recovery of some material that you want to valuable.

16 MR. O'NEILL: So I think that this is
17 the important difference is that with respect to the
18 predicate -- again I'm going back to the factual
19 predicate for (d) -- is that we're going to be
20 digging big holes and opening up holes to the
21 aquifer.

22 Not correct. Therefore, the
23 environmental issues that we have not discussed that
24 relate to that, they're not going to happen.
25 Therefore, this is not a contention of omission

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1 because the predicate is not there.

2 CHAIRMAN KARLIN: Are there going to be
3 any surface impairments, no surface impairments in
4 the entire facility?

5 MR. O'NEILL: I'm sorry. Surface
6 impalements?

7 CHAIRMAN KARLIN: Of water. Surface
8 impalements of water.

9 MR. O'NEILL: Of course, as described in
10 the ER, there will be settling ponds for when there
11 are storms and runoff. And what that has done, as
12 described in the ER, is it allows the aquifers to be
13 recharged rather than having storms and runoff go
14 down into the waters. Because remember, you're
15 building them up so you don't want the runoff.

16 CHAIRMAN KARLIN: Okay. But I thought
17 that's what Dr. Bacchus' non-mechanical watering
18 included, de-watering included was, you know,
19 situations where there were surface impalements. I
20 mean, maybe they're required because there's paving
21 of roads or other, you know, impermeable stuff going
22 on that therefore you collect the water, and you put
23 it in an impalement.

24 And ideally, you're saying, well that
25 water then percolates back into the ground water and

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1 it provides some recharge. But I think Dr. Bacchus
2 is saying: Well, yes, but it also accelerates
3 evaporation and so the net effect is a de-watering
4 effect.

5 I don't know whether that is true or
6 not, but that seems to be her approach. And so she
7 is saying: Well, when you build those kind of things
8 there is a non-mechanical de-watering because
9 otherwise, when it rained, it would just all
10 percolate down on through. And you say: Oh, no, it
11 would all run off into the bay or something.

12 And isn't that merits? I mean, are we
13 dealing with merits now?

14 MR. O'NEILL: Let's go back to what a
15 contention is required. Ironclad obligation to
16 review the ER and tell us what is wrong with the
17 discussion of the de-watering that will actually be
18 done here during construction. Tell us what is
19 wrong with the settling ponds which will be
20 established and will be used to recharge the
21 aquifer. Tell us why we have an issue. That has
22 not been done in one occasion.

23 CHAIRMAN KARLIN: I thought they were
24 saying that, you know, the ER references, they seem
25 to be alleging vaguely to: Well, we have best

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1 management practices; we will take care of it; don't
2 worry about it.

3 And they're saying: Well, you know, just
4 generalized BMP's doesn't cut the mustard; it
5 doesn't help us, so there's not enough of a
6 description.

7 Did they not talk about that as part of
8 their problem?

9 MR. O'NEILL: I don't think they talked
10 about it as part of their problem. But recalling
11 one of our other issues is that in cases of ground
12 water runoff, as I pointed out in my opening, there
13 is another state agency to whom we have to satisfy.
14 So we are going to say: We will do what that agency
15 requires with respect to mitigation of runoff. We
16 don't know precisely what the agency will require so
17 we can't tell you. But we know that that agency
18 with jurisdiction over this issue, we will do what
19 we have to do to get the permit to do that.

20 The same thing with wetlands, by the
21 way. We have to have a mitigation plan that will be
22 acceptable to the Army Corps of Engineers for
23 jurisdictional wetlands and to the Department of
24 Environmental Protection for non-jurisdictional
25 wetlands. So our mitigation plan is not perfect in

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1 the ER because we haven't yet worked through those
2 issues.

3 What we do know is that the wetlands
4 issue will be better than an existing site once we
5 complete our work on the site.

6 CHAIRMAN KARLIN: Well, I understand
7 that there are other regulatory agencies that will
8 deal with wetlands, 40 C.F.R. 230, or whatever, and
9 other issues. You're not suggesting that just
10 because other agencies have jurisdiction that you
11 can exclude them from otherwise required EIS or ER?

12 MR. O'NEILL: The Commission and staff
13 must prepare an environmental impact statement to
14 support the major federal action of granting the
15 COL.

16 CHAIRMAN KARLIN: Right.

17 MR. O'NEILL: But it is purely
18 informational so that the Commission and the public
19 understand what the impacts are and whether they are
20 significant or not.

21 What the Applicant does is prepare, as
22 requested by the staff in its detailed guidelines,
23 an ER that gives them the information and then the
24 staff comes back and asks a lot of questions. But
25 the staff also gets significant information from

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1 these same state agencies. The Army Corps of
2 Engineers is actually going to be consulting with
3 the NRC staff because they will use the EIS as the
4 record of decision for the 404 permit.

5 So the agencies are working together.
6 All of these issues are being worked out and this ER
7 is not the one-snapshot total view of the
8 environmental impacts because it's not the
9 Applicant's responsibility; it's the Agency's.

10 CHAIRMAN KARLIN: I just wanted to
11 clarify that you -- I mean, the fact that another
12 agency has jurisdiction over some aspect of this
13 site does not mean that the ER or the EIS does not
14 need to address those impacts. Do you agree with
15 that proposition?

16 MR. O'NEILL: Absolutely.

17 CHAIRMAN KARLIN: Okay. And the staff,
18 I think, has asserted that in its brief and it is
19 most unfortunate -- and we will get to that later --
20 but the fact that some other agency has jurisdiction
21 does not mean the ER can be silent on that subject.
22 If there's an impact that needs to be covered. And
23 I think you've acknowledged that.

24 The question and the point you've raised
25 is everybody doesn't have to duplicate everybody

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1 else's effort. If there's already been a good
2 discussion in some other document it can be used in
3 the NRC process.

4 MR. O'NEILL: Precisely.

5 CHAIRMAN KARLIN: I don't know whether
6 there has been, though. I mean, is that
7 incorporated in your ER, some other discussion on
8 these issues?

9 MR. O'NEILL: Every year we are required
10 to submit an update to the COLA. We are presently
11 working through the first update, first annual
12 update to the Harris COLA, same company.

13 And yes, a lot of the information, the
14 information that is provided to the staff in the
15 response to request for information, and included in
16 some of the information will be information that was
17 submitted to the Florida Department of Environmental
18 Protection.

19 For example, one of the issues here is
20 salt drift. That is covered by an air permit. We
21 have that air permit. The Florida Department of
22 Environmental Protection has already reviewed and
23 determined that the amount of salt drift will be de
24 minimis and not a problem.

25 CHAIRMAN KARLIN: Yes. But again, I ask

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1 -- I kind of say, so what? I mean, that's not
2 relevant to you need to have an ER and the ER needs
3 to address the environmental impacts. And if salt
4 drift is an impact, you need to discuss it.

5 And the fact that you've got a permit
6 from somebody else is great. You need to have that,
7 you're going to have to get that, and I'm glad you
8 did. But this ER needs to discuss it.

9 And maybe it has discussed it
10 adequately, and maybe it hasn't. I don't know. But
11 the fact that you've gotten it from somebody else is
12 not dispositive or almost even relevant.

13 MR. O'NEILL: Well, it is relevant to
14 the following extent. I believe, with all due
15 respect, that the information, since we submitted
16 this in 2008, that we provided to the Department of
17 Environmental Protection who asked for additional
18 information -- which, by the way, the issue that
19 they asked questions about was the very issue of
20 salt drift -- was additional information that also
21 the staff has access to as it is preparing its
22 environmental impact statement.

23 And the information that we summarized,
24 to be sure, in the Environmental Report where we
25 note that, you know, the guidelines for the amount

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1 of salt deposition -- assuming all of it was salt,
2 by the way -- is well within the guidelines, was the
3 summary statement, to be sure. But the details went
4 to that agency that has the primary jurisdiction
5 over issuing that permit which is a state agency
6 working under an EPA statute.

7 So this whole process -- I mean, I'm
8 going to do the same sort of thing Ms. Olson did.
9 It brings everything together. The NRC has its
10 responsibility and summarizes it to meet NEPA.

11 But there are many other permits and
12 this Applicant is working daily -- in fact, I have
13 counsel, environmental counsel in Florida are here
14 today who are working before all these agencies to
15 get all of these different permits and providing the
16 same information.

17 So you've got the ER. Very big
18 document. This is an issue. We've summarized the
19 information. We didn't answer every possible
20 question because it would be five times as big if we
21 did that.

22 So the Intervener says: Well, what
23 about salt drift? The answer is, unless they come
24 up with something that gives us a reason to have a
25 contention on it, and which they haven't for any of

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1 these, then there is no litigable admissible
2 contention. That is the point.

3 It is important to the public and for
4 everyone to know that we are, in fact, continuing to
5 provide information to the NRC as necessary and as
6 required by the NRC staff so that they can do their
7 job. NEPA is their job, really, not our job.

8 ADMIN. JUDGE MURPHY: I have a couple of
9 hopefully specific questions. First of all, I come
10 back to my interest in this question of what is
11 small and what's large, and with regard to de-
12 watering.

13 I think the ER does an interesting job
14 of actually quantifying de-watering effects,
15 although I lost track sometimes of between pre-
16 construction and construction.

17 But, in fact, even with these liners and
18 grouting associated with the embedment structure,
19 here I'll read from the ER on page 521. It says:
20 "Withdrawal of ground water could affect the
21 potentiometric head. Such a withdrawal could affect
22 spring discharges, other well users, and cause out-
23 coning of brackish water into previously fresher
24 portions of the Floridian aquifer. It could result
25 in localized effects on water levels in surface

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1 water bodies and wetlands, possibly producing small
2 ecological effects."

3 And now I recognize this is from Chapter
4 Five, so that has to do with the operations use of
5 ground water as a resource during operations.

6 MR. O'NEILL: Right.

7 ADMIN. JUDGE MURPHY: And in the case of
8 the construction, I think your numbers are that an
9 average of about a half million gallons per day at
10 one point, and then at another point you note about
11 one-and-a-half million gallons per day, depending on
12 where you read the number, even considering your
13 grouting and isolation of the pit you'll have to
14 dig, or the excavation.

15 So there is a substantial amount of
16 water, of de-watering that goes on during the
17 operations and some of that may get recharged and so
18 it is recycled. And you make the point that that is
19 a fraction of the amount of water that is used
20 during the operations at one point.

21 MR. O'NEILL: Right.

22 ADMIN. JUDGE MURPHY: And then in your
23 evaluation of the operations you talk about
24 simulations indicated: The potential draw down
25 impact to adjacent ground water users of the upper

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1 Floridian Aquifer is on the order of one foot or
2 less, and draw down is not expected to cause any
3 adverse effects to users' ability to withdraw ground
4 water. Therefore, mitigation measures in place, the
5 impacts from ground water use on supply and quality
6 are expected to be small.

7 And so those are your own recognition of
8 quantities of ground water use and potential
9 effects.

10 MR. O'NEILL: Right.

11 ADMIN. JUDGE MURPHY: And I wonder,
12 first of all, how you rationalize -- these real
13 observable effects may be minimal on users, but I'm
14 not sure it got to the point of addressing effects
15 on the ecology. How do you rationalize that with,
16 you know, the Part 51 definition of small age refers
17 to environmental effects that are not detectable or
18 are so minor they will neither destabilize or
19 noticeably alter any important attribute. Would you
20 say these are unnoticeable or completely negligible
21 effects?

22 MR. O'NEILL: I would certainly not say
23 they are unnoticeable potentially. Remember, again,
24 they are running models and coming up with what the
25 ground water usage will be. And usage, really. I

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1 mean, this is usage because you are withdrawing from
2 the aquifer for a large operation. Right?

3 You have a plant; you need water as you
4 do for many things. So they become the -- that's
5 really what most of that is. The number that you
6 cited, I mean, the million gallons per day, is the
7 use of water for the activities of that large
8 enterprise.

9 ADMIN. JUDGE MURPHY: Yes, I understand
10 that.

11 MR. O'NEILL: And so the answer is yes,
12 it could be noticeable under certain circumstances,
13 and they've done modeling to say, but it won't be
14 any more than that. It won't affect anybody's usage
15 of it, and characterize it as small. I mean, maybe
16 somebody else would characterize it as moderate. It
17 is certainly not large. So we could have that.

18 ADMIN. JUDGE MURPHY: It may be a small
19 effect in terms of water use by other potential
20 water users.

21 MR. O'NEILL: Right.

22 ADMIN. JUDGE MURPHY: And then there
23 aren't that many, of course. And it is interesting
24 to compare that water use with other communities in
25 the sixteen kilometer region, which you do. But I

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1 think that in Contention 4, in general, an issue
2 that was raised at the outset of this discussion was
3 that I'm not sure it is fair to sub-divide it into a
4 bunch of little pieces and to try to make each one
5 of them into an issue.

6 I think that the Petitioners have quite
7 clearly expressed the notion of the cumulative
8 effects, repeatedly made the case of the cumulative
9 effects. It's not just the mining; it's not just
10 the de-watering; it's not just the salt drift; it's
11 not just these individual effects.

12 Has the Applicant addressed the
13 cumulative, the potential cumulative environmental
14 effects of these things?

15 MR. O'NEILL: And the cumulative
16 environmental effects are described in both Chapter
17 4 and Chapter 5, and, which was never mentioned,
18 Chapter 10, which scrolls everything up. And so in
19 Chapter 10 you have the cumulative impacts of
20 everything environmental. You have a cross-
21 reference to the specific sections which the impacts
22 are discussed.

23 And so if there is a disagreement with
24 the analysis, the cumulative impacts, that's where
25 they have an obligation to take a look at and tell

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1 us where is it that you have a problem with what
2 we've said.

3 This is vague. This is sort of, you
4 know -- and besides that, we didn't draft these. We
5 looked at contentions that said contention basis,
6 contention basis, and went down the list.

7 So now to roll this back up, I mean, in
8 some respects my argument is that all of them fall.
9 Because if you look at (d), which is the de-watering
10 that is going to occur, and the mining, and the
11 huge, you know, pit we're going to establish there,
12 seventy-five feet down -- I don't know how many
13 acres they thought it was, 300, or whatever it was -
14 - and then the mechanic, the non-mechanical de-
15 watering that would occur, and then it seems to me
16 that if you infer from the reference to Bacchus E --
17 because we can only infer because we have no
18 analysis -- that what she is saying is that all of
19 the horribles, that are in the other parts of these
20 contentions, all flow from this de-watering.

21 And that's going to result in the
22 problems with the --it's going to be the impacts on
23 the outstanding Florida waters in 4(f). The
24 alteration of nutrient concentration in waters in
25 4(g). The destructive wildfires in 4(h). The

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1 premature tree killing in 4(j). The air quality
2 degradation from the wildfires in 4(k). Irreparable
3 harm to public and private lands from all of the
4 aforementioned, 4(l). And the adverse impact on
5 federally listed species in 4(m). All of that flows
6 from this horrible de-watering of the aquifer which
7 we strongly suggest there is no expert opinion that
8 ties that all together, unless I'm supposed to read
9 all of this and try to figure it out.

10 CHAIRMAN KARLIN: Let me sort of break
11 in there.

12 MS. WRIGHT: Two minutes.

13 CHAIRMAN KARLIN: Two minutes. Okay.

14 You've asked us to focus solely on the
15 concrete pad, 1.8 acres. What is the total area of
16 impermeable surface that the construction of these
17 two nuclear plants would take? How many acres?
18 Roads, concrete, impermeable parking lots.

19 MR. O'NEILL: I will get you the number
20 tomorrow. I don't have it off --

21 CHAIRMAN KARLIN: Well, I'm not asking
22 for --

23 MR. O'NEILL: Thirty acres; something
24 like that, maybe.

25 CHAIRMAN KARLIN: I mean, it's not just

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1 this little, this one little spot?

2 MR. O'NEILL: No, no, no. Aw, but the--

3 CHAIRMAN KARLIN: And I don't see that
4 they are saying it's this one little spot. Now,
5 maybe I'll go back -- I'll have to go back and study
6 that. But I see you want us to look at that one
7 little spot. Now, maybe that's what all they said,
8 but they didn't seem that detailed as you're putting
9 us down to that.

10 Let me ask another question.

11 MR. O'NEILL: Sure.

12 CHAIRMAN KARLIN: They have three or
13 four contentions kind of at the end and they call
14 the roll -- maybe the roll up contentions.
15 Contention 4(1), where they say, where they refer to
16 these, the phrase "as described above."

17 They get to this, they say: Irreparable
18 harm to public lands, and waters, and private
19 property, the ER fails to address the harm to, you
20 know, lands and such. Based on all the problems and
21 deficiencies that we've listed in the prior, you
22 know, I won't call them contentions, as described
23 above, the ER fails to adequately cover -- summarize
24 all the impacts, or the ER fails to adequately
25 mitigate all the impacts because it missed all these

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1 impacts.

2 Is it axiomatic that if those prior
3 elements are admissible then the summary described
4 above, you know, the provisions are also admissible?

5 MR. O'NEILL: Absolutely not.

6 CHAIRMAN KARLIN: Somehow I thought you
7 would say that. Okay.

8 MR. O'NEILL: Well, Chapter 10. Where
9 has this Petitioner looked at the ER, looked at our
10 summary of all the environmental impacts in great
11 minute detail, and to find fault with it?

12 CHAIRMAN KARLIN: No. But I'm saying,
13 if you posit that, indeed, there are individual
14 specific defects in the discussion, then isn't it
15 axiomatic that the summary of the discussion will
16 suffer from the same problem?

17 MR. O'NEILL: Of course. That's true,
18 yes.

19 MS. WRIGHT: Time.

20 CHAIRMAN KARLIN: Okay. Anymore
21 questions?

22 (No response.)

23 CHAIRMAN KARLIN: All right. Thank
24 you, Mr. O'Neill. You want to keep going with the
25 staff at this point?

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1 CHAIRMAN KARLIN: We've been going for,
2 you know, a couple of hours and so I think it would
3 be useful for us to take a break.

4 We will reconvene in, let's say, fifteen
5 minutes. Okay? Thank you. We're adjourned at this
6 point.

7 (Off the record, 3:06 p.m.)

8 (Back on the record, 3:25 p.m.)

9 CHAIRMAN KARLIN: Thank you. Please be
10 seated.

11 During the break we had a few logistical
12 things that we learned that I think will help us out
13 here.

14 One, we're starting -- in the order we
15 planned to start tomorrow at 10 a.m. And the reason
16 for that is because they have first appearance, I
17 think is what they call it here in the local court.
18 And the judge -- I believe it was Judge Smith, who
19 was going to use this courtroom for that activity
20 first appearance and so he needed the courtroom at
21 8:30 or 9:00.

22 It now appears that Judge Smith has so
23 kindly moved -- is going to use his activity in
24 another courtroom, so we have this facility, you
25 know, all morning tomorrow and all afternoon, of

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1 course.

2 So unless anyone objects, I will propose
3 that we move the start time up to 9 a.m. tomorrow
4 morning rather than 10:00 so we can get going a
5 little earlier and maybe then get out a little
6 earlier. Is that a problem for anybody? No
7 objections?

8 Okay. Great. Then we will start at
9 9:00, 9 a.m. We might start even earlier but we've
10 got to drive about an hour to get up here in the
11 morning. We're in Crystal River, staying down
12 there. So we'll start at 9 a.m.

13 And we're going to start with Contention
14 Number 1, as I think may have mentioned in the
15 introduction. So tomorrow morning that's what we
16 will start with.

17 The second part is that the officers
18 have kindly indicated that at the end of the day
19 today they are going to lock up this courtroom. So
20 anyone who wants to leave materials in here
21 overnight or something, or any of the parties, the
22 litigants and the court reporter, or whatever, can
23 do that. So we will have this facility locked up if
24 you want to leave your stuff here.

25 With that, unless there are other

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1 questions, I think it's the staff's turn. Twenty
2 minutes for the staff.

3 MS. GOLDIN: Good afternoon. The
4 staff's position is that all contentions --

5 CHAIRMAN KARLIN: Could you re-state
6 your name? I'm sorry.

7 MS. GOLDIN: Good afternoon. My name is
8 Laura Goldin.

9 CHAIRMAN KARLIN: Ms. Goldin. Okay.
10 Thank you.

11 MS. GOLDIN: The staff's position on
12 Contention 4, is that it is inadmissible in its
13 entirety, basically due to the failure of the
14 Petitioners to satisfy the criteria in 2.309(f)(1).
15 And this runs across the Board.

16 Otherwise, the NRC staff stands by its
17 pleadings, and we would be happy to answer any
18 questions the Board might have.

19 CHAIRMAN KARLIN: All right. That was
20 very succinct. We do have some questions.

21 Well, let's just start with page twenty-
22 nine of your brief. You talk about in that page,
23 "The Joint Petitioners have failed to give an
24 adequate basis for their contention. The basis
25 requirement exists." Basis, basis.

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1 Would you explain what the basis
2 requirement is?

3 MS. GOLDIN: Basis would be the
4 underlying support or information to support their
5 argument.

6 CHAIRMAN KARLIN: Which of the sub-parts
7 of 2.309(f)(1) refer to the word "basis"?

8 MS. GOLDIN: I believe it is Roman
9 Numeral II.

10 CHAIRMAN KARLIN: And what does it say?
11 You should have the Regs up there with you.

12 MS. GOLDIN: Just provide a brief
13 explanation of the basis for the contention.

14 CHAIRMAN KARLIN: There's no requirement
15 for factual support in that, is there?

16 MS. GOLDIN: It doesn't appear so.

17 CHAIRMAN KARLIN: But throughout your
18 brief you talk about factual support for the basis.

19 MS. GOLDIN: I believe we were also
20 referring to other parts of 2.309(f)(1) such as
21 Roman Numeral V.

22 CHAIRMAN KARLIN: Isn't it correct that
23 when it says, "A brief explanation of the basis for
24 the contention," they just means the theory, the
25 concept, the rationale for the contention? There is

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1 no requirement in the Reg, that I can see, for any
2 factual support or expert support in (ii).

3 MS. GOLDIN: I don't see that written.
4 But it would seem that someone sustaining the
5 rationale, they would have to -- it would have to be
6 something more than a bare assertion, just a mere
7 theory.

8 CHAIRMAN KARLIN: Okay. Cite me some
9 Regs that say (ii) requires more than just a brief
10 explanation of the theory or concept. Cite me a
11 case that says that.

12 MS. GOLDIN: The Williams States Lee case
13 says that.

14 CHAIRMAN KARLIN: Oh, where is that in your
15 brief. Let's go to page thirty-two of your brief.
16 I think that's where you cite that. In the middle
17 of the page, on page thirty-two, you cite the Lee
18 case with "A contention, quote, 'will be ruled
19 inadmissible if the Petitioner has offered no
20 tangible information, no experts, and no substantive
21 affidavits'" but, instead, only bare assertions and
22 speculations." See Duke Energy.

23 Is that the case you're citing?

24 MS. GOLDIN: Yes. Yes, Your Honor.

25 CHAIRMAN KARLIN: Who wrote that case?

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1 Is it a Board decision?

2 MS. GOLDIN: I have it as a Board. I
3 have it cited as --

4 CHAIRMAN KARLIN: So it is not binding
5 on us, is it? It is a Board decision. Is Board
6 decisions binding on other Board decisions? Don't
7 you know that?

8 MS. GOLDIN: No.

9 CHAIRMAN KARLIN: You don't know or is
10 it binding?

11 MS. GOLDIN: Meaning not, but I would
12 think that it would be persuasive.

13 CHAIRMAN KARLIN: Okay. It's not
14 binding.

15 But they do cite Fansteel and that is a
16 CLI decision, isn't it?

17 MS. GOLDIN: Yes.

18 CHAIRMAN KARLIN: Now, is there anything
19 in (ii) that says "tangible information, experts, or
20 substantive affidavits"?

21 MS. GOLDIN: No. But, Your Honor, the
22 rest of 2.309(f)(1), the roman numerals require such
23 factual information. And looking at two through
24 nine --

25 CHAIRMAN KARLIN: Okay. Where does it

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1 require substantive affidavits. Show me anything in
2 2.309(f)(1) that requires -- requires substantive
3 affidavits.

4 MS. GOLDIN: I'm looking at five.
5 Provide a concise statement of the alleged facts or
6 expert opinion.

7 CHAIRMAN KARLIN: "Or expert opinions."
8 Alleged facts or expert. It doesn't require expert
9 opinions, does it?

10 MS. GOLDIN: No. But I'm saying one or
11 the other. They have to provide some --

12 CHAIRMAN KARLIN: Well, you're
13 suggesting that you have -- the quote you gave us
14 says is that you have to have substantive
15 affidavits.

16 Are you really asserting that you
17 believe that this Reg requires substantive
18 affidavits?

19 MS. GOLDIN: The Regulation requires
20 them to provide something in support of their
21 assertions, which is what the --

22 CHAIRMAN KARLIN: But you said "tangible
23 information, experts, or substantive affidavits."
24 Now, let's look at the Fansteel case. When was that
25 issued?

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1 MS. GOLDIN: I'm seeing that the
2 citation is 2003.

3 CHAIRMAN KARLIN: And when were these
4 Regs issued and significantly overhauled?

5 MS. GOLDIN: Recently, 2007.

6 CHAIRMAN KARLIN: You should know the
7 answer to that.

8 MS. GOLDIN: 2004.

9 CHAIRMAN KARLIN: 2004. January 14th,
10 2004, a major re-write of the Regs. So this case
11 was before that, wasn't it? Before the Regs were
12 written.

13 MS. GOLDIN: Yes, sir.

14 CHAIRMAN KARLIN: The Fansteel.

15 Now, do you know what sub-part the
16 Fansteel case dealt with?

17 MS. GOLDIN: I do not.

18 CHAIRMAN KARLIN: You're citing this
19 case to me. You brought it up yourself. Aren't you
20 familiar with that case?

21 MS. GOLDIN: I am not familiar. I'm
22 familiar with this citation, with the first part of
23 the Williams States Lee citation.

24 CHAIRMAN KARLIN: Well, when you cite a
25 case to me you should be citing -- you cited the

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1 Fansteel, quoting Fansteel. And Fansteel dealt with
2 the sub-part (m) proceeding under the old Regs. And
3 do you know what a sub-part M proceeding was?

4 MS. GOLDIN: No.

5 CHAIRMAN KARLIN: Well, you should.
6 It's a licensed transfer proceeding. It's not a
7 proceeding under these Regs. The Regs have been
8 significantly rewritten.

9 Now, let's go back to the quote you
10 quoted to us. And you're dealing with -- you're a
11 lawyer, you're a trained lawyer. The staff are
12 trained lawyers. We're dealing with the pro se. I
13 think that you have a special obligation to be very
14 accurate with regard to the law that you cite
15 because these pro se's may believe you, may actually
16 believe you, and we may actually believe you. And
17 we want to have -- you should have credibility.

18 So, what Regs says you have to have an
19 expert? Fansteel. What you quote, "Has offered no
20 tangible information, no experts, and no substantive
21 affidavits."

22 Is there a requirement in a contention
23 in 2.309(f)(1) to have an expert?

24 MS. GOLDIN: There is no requirement to
25 have an expert. But it is an option, a way for them

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1 to prove what they are asserting in their petition.

2 CHAIRMAN KARLIN: But you are suggesting
3 that that is a requirement. "A contention will be
4 ruled inadmissible if the Petitioner has offered no
5 tangible information, no experts, or no substantive
6 affidavits." You said that in your brief. And now
7 you're saying, "Well, you don't really have to have
8 that."

9 MS. GOLDIN: This has been cited --

10 CHAIRMAN KARLIN: It would just be a
11 nice option to have it.

12 MS. GOLDIN: I wasn't saying that it
13 requires them to have an expert. It's an option for
14 them to have an expert.

15 CHAIRMAN KARLIN: No, no, no, no, no.
16 Let's read what you wrote, page thirty-two. Quote -
17 - you wrote this. "A contention will be ruled
18 inadmissible if the Petitioner has offered no
19 tangible information, no experts, no substantive
20 affidavits." You wrote that. You didn't say it was
21 an option. You said it was a requirement, that it
22 will be ruled inadmissible if it doesn't have that.

23 MS. GOLDIN: Your Honor, however, these
24 quotes or these citations are supporting, are
25 support for the regulations. Our position as per

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1 2.309(f)(1), and looking to 2.309(f)(1) Roman
2 Numeral V, VI --

3 CHAIRMAN KARLIN: But that wasn't even
4 2.309(f). That was 2.1306(b)(3) is what that was.
5 A very different Reg. A totally different -- the
6 Reg is very similar in some respects but it has some
7 differences.

8 MS. GOLDIN: The citation was put in
9 here to support our position. Under 2.309(f)(1)
10 this contention is inadmissible because it fails to
11 support the basis. They have a theory and they
12 don't support it.

13 CHAIRMAN KARLIN: So, is the statement,
14 "A contention will be ruled inadmissible if the
15 Petitioner has offered no tangible information, no
16 experts, and no substantive affidavits."

17 Is that statement that you made in your
18 brief true or false?

19 MS. GOLDIN: It should be true.

20 CHAIRMAN KARLIN: So you're saying it
21 will be ruled inadmissible if it doesn't have
22 substantive affidavits? You're saying that? Now,
23 what Reg says that?

24 MS. GOLDIN: The 3.209(f)(1), the
25 criteria.

1 CHAIRMAN KARLIN: Where does it say
2 that? Where does it say you have to have a
3 substantive affidavit?

4 MS. GOLDIN: I'm not sure what you are
5 getting at, Your Honor.

6 CHAIRMAN KARLIN: I'm getting at that
7 you made a statement and I don't know whether -- and
8 I don't think that's true. And I'm just trying to
9 find what your basis for the statement, quote, "A
10 contention will be ruled inadmissible if the
11 Petitioner has offered no tangible information, no
12 experts, and no substantive affidavits."

13 You made that statement. Please provide
14 me with some citation, some law that says that other
15 than Duke Lee, which is a Board decision which --
16 it's not even a holding in that decision. It's
17 dicta.

18 MS. GOLDIN: Well, first and foremost, I
19 can cite you to 2.309(f)(1) because that's what our
20 petition, our --

21 CHAIRMAN KARLIN: (f)(1) has six sub-
22 parts. Which sub-part?

23 MS. GOLDIN: As I've said, 5, 6.

24 CHAIRMAN KARLIN: Okay. Where does sub-
25 part 5 say you have to have an expert?

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1 MS. GOLDIN: It says, "alleged facts or
2 expert."

3 CHAIRMAN KARLIN: Okay. So where does
4 it say you have to have an expert. You will be in
5 admissible if you don't have an expert. It says "or
6 experts." It doesn't say you must have an expert.
7 It says, "alleged facts or an expert." Does that
8 mean you have to have an expert? Simple logic 101.

9 MS. GOLDIN: No.

10 CHAIRMAN KARLIN: No, you don't have to
11 have an expert. So that part of your statement is
12 wrong.

13 I think you need to be careful when the
14 staff is citing case law to have a real basis on
15 what it says because you are dealing with pro se's.
16 And, you know, I just think that that was a grievous
17 problem here.

18 ADMIN. JUDGE BARATTA: I would like to
19 ask a question. You made a statement earlier that
20 there were no basis provided. But we've heard from
21 the Intervener that they view 4, really, as one
22 contention. And that the sub-parts, I believe they
23 indicated, are acting as the basis, if you view,
24 rather than as was implied by the way they wrote it,
25 that there are seventeen different contentions, each

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1 with its own basis. You now view it as one
2 contention with the sub-parts, at least some of the
3 sub-parts, being basis.

4 Does that change your view of Contention
5 4? And if so, why not?

6 MS. GOLDIN: No, Your Honor. Contention
7 4, whether they divide it into sub-parts or they
8 give it to us as one contention, is inadmissible
9 regardless of how you slice and dice it. And that's
10 what we've said in our pleading.

11 ADMIN. JUDGE BARATTA: And I guess the
12 other thing I noted, you said this specifically with
13 respect to 4(d) It says, "The contention is
14 inadmissible because it fails to demonstrate a
15 genuine dispute, and fails to provide facts or
16 expert opinion pursuant to 3.209(f)(1) 5 and 6."

17 The citation, though, to the
18 Intervener's articles and such, expert's articles,
19 don't they provide at least some expert opinion that
20 supported their contention?

21 MS. GOLDIN: We don't believe so. The
22 NRC staff -- and we cited the USEC case for this.
23 They merely -- they're attaching Dr. Bacchus'
24 declarations and articles seemingly in support of
25 their contention, but they don't explain the nexus,

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1 how her expert opinions support what they are
2 saying. That's not sufficient. They have to show
3 how the documents she's putting forth connect to
4 their contention.

5 ADMIN. JUDGE BARATTA: Could you
6 elaborate on that?

7 MS. GOLDIN: Well --

8 ADMIN. JUDGE BARATTA: What would you
9 expect to see there? You said they have to show the
10 nexus; they have to show -- they have to elaborate
11 on the connection, I believe. What did you mean by
12 that?

13 MS. GOLDIN: I would -- it would be
14 required if they -- they citing, you know, the non-
15 mechanical de-watering paper, they should say how
16 this proves their contention, how it shows -- how
17 they feel this connects to insufficiencies that they
18 are claiming, are alleging are in the ER.

19 ADMIN. JUDGE BARATTA: Do they actually
20 have to prove at this stage their contention?

21 MS. GOLDIN: They don't have to prove
22 but they have to provide some semblance of
23 information to support their contention. That's
24 also case law.

25 CHAIRMAN KARLIN: I would like to --

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1 ADMIN. JUDGE MURPHY: Just briefly, if I
2 may, please.

3 CHAIRMAN KARLIN: Go ahead.

4 ADMIN. JUDGE MURPHY: Because it's the
5 same -- basically I have the same question that Dr.
6 Baratta had. And I saw repeatedly in your document
7 the assertion that they have no expert opinion or
8 facts. And I was curious initially whether you
9 considered Dr. Bacchus not to be an expert or
10 whether you considered the material in her
11 publications not to be facts.

12 MS. GOLDIN: Neither. We're not saying
13 Dr. Bacchus is not a qualified expert. We're not
14 disputing that. We're not disputing the documents
15 that she wrote. We're just disputing the way in
16 which Petitioners have presented this information to
17 us.

18 They haven't shown a nexus between the
19 expert opinions and their contention. They've kind
20 of slapped them together and said, you know: See
21 Dr. Bacchus, see this what she wrote; this proves
22 what we're saying.

23 That's not enough. They have to
24 explain. They have to connect the dots, and they
25 did not. So therefore it fails under 2.309(f)(1).

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1 CHAIRMAN KARLIN: Could you turn to page
2 fifty-two of your brief, please? This is the
3 discussion of the contention part related to 40
4 C.F.R section or Part 230.

5 And again the staff -- are you there?

6 MS. GOLDIN: Yes, sir.

7 CHAIRMAN KARLIN: Okay. The last
8 paragraph. Staff Response. They've raised a
9 contention that there is a problem that they allege
10 that the ER doesn't adequately cover the dredge and
11 fill issues. And you say, "The issue raised is
12 outside the scope of the proceeding because the NRC
13 ...". -- because, this is the reason -- "...has no
14 jurisdiction over the issuance of permits under 40
15 C.F.R. section 230." Actually that should be Part
16 230.

17 But could you refer to 10 C.F.R.
18 5171(d), please? It is page thirty-seven. Are you
19 there?

20 MS. GOLDIN: Yes, sir.

21 CHAIRMAN KARLIN: Look at the footnote
22 number three at the bottom, and please read that to
23 me.

24 MS. GOLDIN: "Compliance with the
25 environmental quality standards and requirements of

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1 the Federal Water Pollution Control Act, imposed by
2 EPA or designated permitting states, is not a
3 substitute for and does not negate the requirement
4 for NRC to weigh all environmental effects of the
5 proposed action, including the degradation, if any,
6 of water quality, and to consider alternatives to --

7 CHAIRMAN KARLIN: Okay. That's far
8 enough. Now, if you go to Appendix A of Part 51,
9 page fifty-eight. On the left-hand column, up on
10 the alternatives discussion, actually about halfway
11 down it says: "An otherwise reasonable alternative
12 will not be excluded from discussions solely on the
13 grounds that it is not within the jurisdiction of
14 the NRC."

15 As I read that, it's saying the fact
16 that something is outside of the jurisdiction of the
17 NRC does not mean that the ER or the EIS doesn't
18 need to discuss it. Do you agree with that?

19 MS. GOLDIN: Information outside our
20 jurisdiction presumably could be evaluated in the
21 EIS if the staff deems that it needs this
22 information for its analysis. However, this
23 information here -- and this is our position -- it
24 is outside -- this is inadmissible because it is
25 outside the scope of our jurisdiction. We don't

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1 issue 404 permits; we don't play a part in the
2 decision-making of that or the effects from that
3 decision.

4 CHAIRMAN KARLIN: What about NRDC versus
5 Norton? What about 40 C.F.R. Section 1502.14©)?
6 They all stand, as do those two things I just cited
7 you, for the proposition that the fact that an
8 environmental impact is outside of the jurisdiction
9 of the NRC is irrelevant with regard to whether or
10 not the EIS or the ER needs to cover it. So your
11 statement here that, first, "The issue is outside
12 the scope of the proceeding because the NRC has no
13 jurisdiction," that's legally incorrect.

14 I think I would commend you to look at
15 5171(d), the one I just cited you, footnote number
16 three, and the other citations. That proposition is
17 just wrong and I think this part of the brief is
18 incorrect.

19 The fact that the 404 permit is outside
20 of the NRC's jurisdiction, the fact that an air
21 permit is outside of the NRC's jurisdiction, the
22 fact that any of these things are outside of NRC's
23 jurisdiction, does not mean they don't need to be
24 covered when there is an environmental impact
25 statement that has to cover all environmental

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1 impacts.

2 MS. GOLDIN: Your Honor, we didn't -- we
3 never said that we didn't think that they ever had
4 to be considered. But at this point, the EIS is a
5 speculative document because it hasn't been fully
6 drafted yet by our staff.

7 CHAIRMAN KARLIN: All right. But this
8 is the ER and the same, I think, proposition as is
9 reflected in those two citations I said covers the
10 ER. The fact that something is outside -- in fact,
11 that's what Mr. O'Neill agreed to, which is the fact
12 that something is outside of the jurisdiction of NRC
13 does not mean it is exempt from the ER or the EIS.
14 And that is what this statement on page fifty-two
15 says, and I believe it is incorrect.

16 MS. GOLDIN: The NRC staff, however, we
17 -- our position on this is that things outside of
18 our jurisdiction we evaluate as cumulative impacts.

19 MS. WRIGHT: Time.

20 CHAIRMAN KARLIN: Anything else?

21 ADMIN. JUDGE BARATTA: Other than I
22 agree with you.

23 I found that really, you know, and it
24 may be that we don't issue that permit. But what
25 we're talking about is whether or not the ER, and

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1 subsequently the EIS, should -- what it should say
2 with regards to those issues that are part of that
3 permit process.

4 And I see nothing in our regulations
5 that say it's not fair game for the ER and the EIS.
6 I think it is quite the contrary, that our
7 regulations suggest that it is. And I don't -- you
8 know, the fact that the proceeding under 40 C.F.R.
9 Section 230; et cetera, is not part of our process
10 really does not -- is not germane. What is
11 important is the environmental issues, whether or
12 not they are to be considered.

13 And I think if you look at any of the
14 other EIS's, you will see, in fact, issues of dust,
15 for example, being examined as an air pollutant.
16 And whether or not the discharge permits, you know,
17 how they are going to be obtained and what the
18 impact might be. I was a little surprised to see
19 what you said there.

20 CHAIRMAN KARLIN: Okay. Thank you, Ms.
21 GOLDIN.

22 ADMIN. JUDGE BARATTA: I haven't --

23 CHAIRMAN KARLIN: Oh, you have other
24 questions. I'm sorry.

25 ADMIN. JUDGE BARATTA: I have another

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1 question. There was a -- if you go to page thirty-
2 four, you have a statement that -- actually it is on
3 page thirty-three. Down at the bottom of page
4 thirty-three. It says, "Also by claiming that it is
5 impossible to mitigate 'Large' impacts from the salt
6 drift and that the Levy ER does not provide this
7 information, Joint Petitioners take issue with
8 findings that are not in the application."

9 I didn't understand what you meant by
10 that because in looking at what they said I didn't
11 quite get that from it.

12 MS. GOLDIN: Our argument here is based
13 on the fact that their calculations due to the
14 evaporative loss in the salt drift. Perhaps they
15 were mistaken as to these. And, as such, as we said
16 in the middle of page thirty-three about, you know,
17 the amount of salt drift that they are claiming is
18 astronomical. We're saying it is actually much
19 smaller based on calculations.

20 In any event we're saying because they
21 were confused as to these calculations, they're
22 disputing something that's not in the application.
23 Because they're not disputing calculations that were
24 in the application. And, as such, it is
25 inadmissible because they are not taking issue with

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1 the information within the application.

2 ADMIN. JUDGE BARATTA: I mean, I
3 understand the next sentence which, "A Petitioner's
4 imprecise reading of a reference document cannot
5 deserve to generate an issue suitable for
6 litigation."

7 And I understood your point earlier,
8 which is that the amount of salt drift is not as
9 implied by their brief. I just didn't understand
10 that one sentence. And that it sounds like -- so
11 what you are saying is the information is not in the
12 application; it is really information that would be
13 erroneous in light of what is in the application.
14 Is what it --

15 MS. GOLDIN: That's correct.

16 ADMIN. JUDGE BARATTA: Okay. I just
17 didn't understand what that one sentence -- it just
18 kind of appeared there.

19 CHAIRMAN KARLIN: I have a follow-up on
20 that, if I may.

21 ADMIN. JUDGE BARATTA: Sure.

22 CHAIRMAN KARLIN: On that page thirty-
23 three, you reflect that the rate of off site
24 deposition, the off site deposition -- the quotation
25 you have from the ER, you've quoted the ER. And it

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1 says: "The analysis resulted in a maximum predicted
2 off-site deposition rate of 6.8 kilograms per
3 hectare per month." And that is below the amount
4 set forth in guidance NUREG-1555. Right?

5 MS. GOLDIN: Correct.

6 CHAIRMAN KARLIN: You agree, do you not,
7 that NUREG- 1555 is guidance?

8 MS. GOLDIN: That's correct.

9 CHAIRMAN KARLIN: And it's not law.

10 MS. GOLDIN: We agree.

11 CHAIRMAN KARLIN: And it's not binding
12 on this Board.

13 MS. GOLDIN: We agree.

14 CHAIRMAN KARLIN: And so if this Board
15 thinks it's a close enough call to look at, we could
16 look at it, even if the staff thinks it's all right
17 under it's own guidance to itself.

18 MS. GOLDIN: That would be your
19 discretion.

20 CHAIRMAN KARLIN: Okay. Thank you.
21 Anything else?

22 ADMIN. JUDGE BARATTA: Well, again
23 following up on reference on -- I guess this is --
24 let's see what page. Page fifty-three again. You
25 have a statement that says, "Joint Petitioners fail

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1 to explain how the alleged inconsistencies with 40
2 C.F.R, Section 230, have any bearing on the NRC
3 licensing proceeding."

4 But it would seem to me that any
5 inconsistency with the federal regulation would be
6 something that would be, at least, merit a comment
7 or something in an ER or an EIS, even if it is just
8 that, we are seeking an exemption from that.
9 Because clearly that should be considered.

10 You know, the ER serves, at least at the
11 beginning, as a surrogate for the EIS. The EIS is
12 generated and then the EIS is supposed to inform the
13 decision maker, which in this case it would be the
14 Commission who would grant the license for
15 construction. And any inconsistencies with federal
16 rules, or state rules or regulations would seem
17 important to be entered into that.

18 So I -- it just seemed like this is, you
19 know, a statement like that is inconsistent with the
20 whole process.

21 MS. GOLDIN: Your Honor --

22 ADMIN. JUDGE BARATTA: What is there to
23 support that?

24 MS. GOLDIN: Sorry to cut you off. Your
25 Honor, we never -- we don't stand by the position

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1 that it will not be considered and it will not
2 become part of the -- figured into the EIS. Our
3 position is that it is outside the scope of our
4 jurisdiction and, as such, is not material to the
5 granting of a license. And certainly here it is
6 outside the scope pursuant to 2.309(f)(1) III.

7 CHAIRMAN KARLIN: Well, didn't we just
8 say that just because it's outside the scope of the
9 agency's jurisdiction doesn't mean it can be
10 excluded from an EIS or an ER.

11 MS. GOLDIN: Right.

12 CHAIRMAN KARLIN: So how do you say it
13 is immaterial? It is very material. Just because
14 it's being regulated by some other agency is not
15 relevant to whether or not you need to cover it in
16 an EIS or the ER.

17 MS. GOLDIN: Well, we never said we
18 wouldn't cover it.

19 CHAIRMAN KARLIN: Well, you are saying
20 you -- let's go back. You said it's out -- this is
21 not required -- let's go to page fifty-two. This
22 contention is inadmissible. The issue raised is
23 outside the scope of the proceeding because the NRC
24 has no jurisdiction." Now, that is a non-sequitur.
25 It does not follow.

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1 The fact that the agency has no
2 jurisdiction over issuance of 404 permits does not
3 mean that the ER or the EIS can exclude those
4 impacts because those documents must cover all
5 environmental impacts whether they're regulated by
6 some other agency or not. Do you agree?

7 MS. GOLDIN: No.

8 CHAIRMAN KARLIN: All right. Cite me
9 some law that says the opposite, then.

10 MS. GOLDIN: I'm not prepared to do so
11 now, but I can -- I can --

12 CHAIRMAN KARLIN: Well, you should study
13 your own Regs because they say just the opposite.

14 Let's go to the next page, bottom of
15 page fifty-three. You have a sentence that says,
16 "Similarly, the NRC regulations implementing NEPA do
17 not require NRC to evaluate environmental impacts
18 within the specific context of 40 C.F.R. Section
19 230." Are you with me?

20 MS. GOLDIN: Yes, sir.

21 CHAIRMAN KARLIN: And it is not section
22 230, it is Part 230, so you cite. "Nor do they
23 contain any requirement that Applicants address the
24 guidelines in 40 C.F.R. part 230."

25 Well, what about 54.45(d). Would you go

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1 to that? 51.45(d).

2 As I read that, let's see, it says, (d).
3 "Status of compliance. The environmental report
4 shall list all federal permits, licenses, approvals,
5 and other entitlements which must be obtained and
6 shall describe the status of compliance with them."

7 So how can you say the Regs do not
8 contain any requirement that Applicants address the
9 requirements of those water quality requirements.
10 Doesn't (d) say, in fact, you have to discuss that?

11 MS. GOLDIN: Our position here is that
12 it is not within the scope of this mini-proceeding.
13 I mean, we're arguing that this contention is
14 admissible if it meets the criteria of 2.309(f)(1).
15 We're saying 404 permits are not within our
16 jurisdiction. NEPA is not a procedural statute. I
17 mean, at this stage we don't see how this is
18 relevant to what -- we don't see how this is
19 admissible.

20 CHAIRMAN KARLIN: All right. Okay.
21 Thank you, Ms. Goldin.

22 Ms. Olson, you have reserved, I think it
23 was, what? Twenty minutes?

24 MS. OLSON: I probably don't need that,
25 but if we do, we'll take it.

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1 CHAIRMAN KARLIN: All right.

2 MS. OLSON: I would like to start with
3 something, if that's okay, brief. Do I get to
4 start?

5 CHAIRMAN KARLIN: You've got twenty
6 minutes.

7 MS. OLSON: Okay. I didn't know if you
8 had a question to start with. Thank you.

9 I would just like all of us to consider
10 that there is a fundamental difference between zero
11 to one, versus one to two. I am not in any way,
12 shape, or form for my organization, for my members
13 or my co-Petitioners, endorsing the idea of adding
14 additional units to existing reactor sites. But I
15 am going to tell you there is a fundamental
16 difference between that activity and this activity.

17 And this contention embodies most of our
18 concerns -- not all of them -- in that regard. So
19 we are talking about a zero to one shift; not a two
20 to four, or whatever.

21 CHAIRMAN KARLIN: You're talking about a
22 zero to two shift.

23 MS. OLSON: Yes. Zero to two shift.

24 Thank you. Even more precisely correct.

25 So circling back to the question about

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1 salt drift. Had we known that we could get DSL we
2 would've brought a cable, then we might've had a
3 little more information to offer. All we can come
4 back with on that point is that we agree with the
5 Petitioner that there is an impact. What we don't
6 agree on is the extent of the impact. We would like
7 you to talk to our expert about the extent of the
8 impact and talk to their expert about the extent of
9 the impact.

10 CHAIRMAN KARLIN: Well, let me ask on
11 that. They make a big point of: Wait a second.
12 You've totally misstated the situation. You go this
13 catastrophic influence, an enormous amount of 43.8
14 million gallons a day.

15 And they're saying: Wait a second.
16 That's all distilled water. That's not going to
17 have any salt in it. You've grossly overstated the
18 problem.

19 Are you contending that all 43.8 million
20 gallons will have salt in it, or are you contending
21 something else? I mean, they're saying: It's
22 distilled water; that isn't going to have salt in
23 it; it's been distilled. There may be some vapor
24 droplets that come along and there is --

25 MS. OLSON: I think this particular

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1 point is an artifact of a situation you might recall
2 where I had bronchitis and Dr. Bacchus was in
3 another proceeding. And I have to admit that the
4 reply brief was mostly written by my colleagues.
5 And I can't actually tell you whether that issue was
6 fully addressed in the reply brief to discern
7 whether it was a mistake or not. And --

8 CHAIRMAN KARLIN: Well, but that was in
9 the briefs that they filed. And you all should've
10 sort of thought about that and said: Well, no, maybe
11 they're right, or they're wrong, or how do we
12 respond. I mean, it isn't a surprise. I didn't
13 just come up with that question.

14 MS. OLSON: Right. I understand.

15 CHAIRMAN KARLIN: You know.

16 MS. OLSON: Okay. So basis, yes. There
17 is a question about our position on that basis. We
18 also have questions about their bases. When it
19 comes to Chapter 10 that's been invoked, it also is
20 simply a laundry list of things that they say they
21 have looked at the impacts and present a table with
22 statements. But there's no real explication of the
23 extent to which cumulative, direct and indirect
24 environmental impacts, I mean, it just makes me
25 blanch to hear that in some proceedings -- again,

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1 we're not asserting that this Applicant is saying
2 this -- but that things like, "City water would be
3 supplied if there was a problem with the ground
4 water." I mean, that is just not an acceptable
5 answer if you're talking about environmental
6 impacts.

7 And so, again, the idea that: Well, the
8 human end users are still going to be able to get
9 water, is not an answer to the concerns that we are
10 raising.

11 And we fundamentally feel that there is
12 not enough information in the environment report to
13 address these questions. Saying "best management"
14 doesn't help us.

15 And I think, you know, fundamental
16 issues that we haven't even mentioned here about the
17 communication of the ground water and the aquifer
18 are not trivial. And we don't have answers in the
19 environment report from the Applicant about things
20 like ancient sinkholes and other forms of connection
21 between the higher water and the deeper water.

22 And we have people in the area who feel
23 they have a right to know about that and that that
24 information needs to be supplied. And that is on
25 the burden -- the burden of supplying that is

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1 Progress Energy Florida.

2 CHAIRMAN KARLIN: Well, I'm not so sure.
3 They have put together an environmental report of
4 some length, I presume. I mean, let me just say for
5 everyone. We haven't read the environmental report,
6 or certainly all the details. We haven't read the
7 application. We've read some of the parts of it
8 that you've cited to us, or tried to, but we don't
9 have mastery of that environmental report. But, you
10 know, it looks like it's probably a pretty big
11 document and they have covered a lot of area.

12 The Regs require environmental reports
13 to cover significant environmental impacts and to
14 cover them in proportion of their significance. And
15 I think they are saying, "Well, we have." And the
16 claims that if we cut down a few trees -- and I'm
17 not trying to be facetious -- if we cut down some
18 trees and it is going to cause global warming, isn't
19 that kind of stretching it? I mean, how many trees
20 are we talking about? You don't even say in your
21 contention whether there are a lot of trees, or a
22 few trees, or little trees. You don't say anything
23 about it. You just say: Well, I've got to cut down
24 some trees and that will cause global warming.

25 Well, that doesn't quite cut it. And

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1 you have the burden to tell us what's wrong with
2 that they said; how come -- is that significant?
3 Where do you draw the line? If I cut a tree down in
4 my yard that will contribute to global warming.
5 Let's posit that in some sense, but is it
6 significance? Is it -- you know, they're saying:
7 That's the level of insignificance; it doesn't need
8 to be addressed under the Regs. What is your answer
9 to that? What have you given us to say that it is
10 significant enough that requires discussion?

11 MS. OLSON: Well; I think again the
12 whole issue of a description without including the
13 progressive and cumulative outcomes is what the part
14 of the basis of this contention is about.

15 And so given the fact that trees will be
16 cut, that this does contribute to the profile of the
17 carbon footprint of the site, and that that's not
18 included in their environment report, combined with
19 the rest of the issues around aquatic impacts, to us
20 are why it's a significant issue that these things
21 are not covered.

22 CHAIRMAN KARLIN: But don't they cover -
23 - they do cover the fact that they're going to clear
24 some forest and cut some trees. They cover that in
25 their environmental report. But what they don't, as

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1 I understand you're concerned about, is they don't
2 cover the greenhouse gas issues that might be part
3 of that and the global warming issues that might be
4 part of that.

5 MS. OLSON: No.

6 CHAIRMAN KARLIN: And they say: Look, we
7 tell you we're going to cut down thirty-x, whatever
8 the number of acres of trees; we say that. And you
9 say -- so what's wrong with that? What's defective?
10 They have covered it, they say.

11 MS. OLSON: Well, I think it's the
12 combination, though, of the impact of that
13 deforestation on the water profile. And, at least
14 the way I read the work, is that the CO-2 is sort
15 of, "And, oh, by the way," you know. The
16 deforestation issue is a hydro ecological issue and
17 the CO-2 issue got added, concatenated to some
18 degree, as an "oh, by the way" piece. And as you
19 suggested, we should be probably be dealing with
20 those with the later contentions on alternatives.

21 CHAIRMAN KARLIN: How about the
22 wildfires? What is the connection with wildfires?
23 I mean, why does the environmental report need to --
24 I mean, how did wildfires come into this at all?
25 And what is the issue? I mean, one of your

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1 contentions is: It doesn't cover destructive
2 wildfires and the impact it will have on nutrients
3 in the soil. One of them is: It doesn't cover
4 destructive wildfires and the particulate emissions
5 that it will cause.

6 Okay. How do we get to the wildfires in
7 the first place?

8 MS. OLSON: Because of the changes in
9 the water systems, I believe, is the assertion.
10 That removing the forest cover and having the
11 impacts on the hydro logical system may, in fact,
12 lead to conditions that will produce more higher
13 probability of fires occurring. And if that is the
14 case, as it's being asserted by Dr. Bacchus, then
15 you have the impacts of those fires.

16 I honestly think that this again
17 connects with the issue of the local mining area;
18 that it's a larger area that's being impacted by
19 these activities. So she's not just talking about
20 the boundary area of the Levy Units 1 and 2 site.
21 She's talking about how the hydro logical, hydro
22 ecological impacts may affect this broader area in
23 Levy County and its surround, and that therefore it
24 could have this impact.

25 ADMIN. JUDGE BARATTA: Could you explain

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1 what you just said? Are you referring to the impact
2 on the broader area from activities at the Levy
3 site?

4 MS. OLSON: Yes. The impacts in terms
5 of -- this is where we need her to be able to
6 articulate things like hydro period, and the
7 pressure issues, and the aquifer, and the
8 interconnections of the whole system. But if you
9 take all the pieces and add them up, she's saying
10 that this activity of building this large facility
11 and using all these materials, if they're mined
12 locally, is going to disrupt --

13 ADMIN. JUDGE BARATTA: Wait, wait, wait.
14 That's the point I wanted to catch. I mean, if
15 they're mined locally. So if we -- let's, for the
16 moment, say they're not mined locally. Do you have
17 a basis for making the same statement? Let's say
18 they come from China.

19 MS. OLSON: Okay. I think we still have
20 the question of the salt impacts. We have the
21 question of the impacts on the flood plain. We have
22 the question of loss of wetlands. We have the
23 question of the impact of withdrawal of ground
24 water, a fairly significant lowering of ground
25 water. I don't think a foot is a little bit, quite

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1 frankly.

2 Those add up together to a situation
3 that is influencing a larger area than that owned
4 and written in yellow in our handout today. And
5 that the impacts across that larger area, that I'm
6 not prepared today, myself, to define for you, but I
7 think my expert might be able to give you more
8 substance on that, would have impacts that could
9 include things like greater probability of fire.

10 And if you're doing that, you have a
11 release of nutrients that are not otherwise released
12 quickly. You have particulate you would not have
13 otherwise, et cetera. She's talking about the
14 systemic impacts, the cumulative impacts of this
15 situation.

16 Now I, personally, would put in all the
17 thermal discharges, but I don't think she
18 particularly dwelled on that.

19 ADMIN. JUDGE MURPHY: I will pose one
20 additional question which gets back to my concern
21 about putting these cumulative effects in the
22 context of other things in the region. And as I
23 read the environmental report, I see ground water
24 use numbers like 400,000 gallons per day, or 1.6
25 million gallons per day. And that's put in contrast

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1 to public ground water within sixteen kilometers of
2 44 million gallons today, and private ground water
3 within sixteen kilometers of 28 million gallons per
4 day.

5 And so I would -- I would expect to see
6 if half a million gallons per day is going to have a
7 big regional effect, are we seeing such an effect
8 from ten times that much or more in the region?

9 MS. OLSON: I would imagine that the
10 majority of those withdrawals locally are
11 agricultural. And they are applied to the land
12 immediately in the area and it percolates directly
13 back into ground water.

14 ADMIN. JUDGE MURPHY: Yeah. I'm sure
15 some of it does and it's probably a challenge to
16 make those comparisons.

17 MS. OLSON: Well, I think those are the
18 appropriate questions. But I think we're here to
19 talk about admissibility. And I think we're here to
20 say these are the primary concerns of the local
21 community. And they are the primary concerns
22 associated with taking a nonindustrial site and
23 having an enormous impact on it, whether you ever
24 operate the thing or not.

25 And, you know, okay, we called digging a

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1 seventy-five foot deep hole "mining." Okay. It was
2 digging a seventy-five foot hole. We don't care.
3 It's still disturbing to a depth that has open
4 questions as to what it will do to the immediate
5 surrounding area; how it will impact that potential
6 interconnection with the aquifer, all those things.
7 And, you know, you can balance it against the quote-
8 unquote benefits, but not if they walk away.

9 ADMIN. JUDGE MURPHY: Thank you.

10 CHAIRMAN KARLIN: Are you done?

11 MS. OLSON: I think so. I mean, I think
12 my co-Petitioners are, you know, in their first real
13 arguments. And they feel like I need to say
14 strongly and deeply that we need a lot more
15 information than we get from the Applicant. And
16 that we're deeply frustrated by that. And yet, I
17 also think that you're creating a good record and I
18 appreciate the process.

19 CHAIRMAN KARLIN: All right. Thank you.
20 Don't go too far because you're going to be back in
21 the box on Contention 3. Yeah, we will give you a
22 second to grab your notes, your backup on Contention
23 Number 3, I guess. You can take a minute or two to
24 get your materials together for that.

25 This is one of the contentions, now.

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1 Contention 4 we spent approximately two hours on, a
2 little bit longer. The rest of the contentions we
3 will spend forty-five minutes on total. It's our
4 plan, anyway. And I think we can keep to it a
5 little closer because they are shorter and more
6 narrowly focused.

7 On this contention, the Intervener, the
8 three Intervenors will have twenty minutes total.
9 Let's see if I've got this right. And the Applicant
10 has fifteen minutes, and the staff then has ten
11 minutes. You don't have to take it if you don't
12 want it. I mean, obviously as the staff did, they
13 just said: Look, if you have any questions, that's
14 fine. And we usually do, but we may not use up all
15 the time.

16 So you have twenty minutes, Ms. Olson.
17 Now, how do you want to break it up with rebuttal?

18 MS. OLSON: You know, maybe seven
19 minutes for rebuttal.

20 CHAIRMAN KARLIN: Seven, huh? That's
21 very precise. Okay. Ms. Wright, you're challenged.

22 MS. OLSON: I've sounded a little bit
23 too short, and you guys have been running over on
24 your two minutes, so --

25 CHAIRMAN KARLIN: Okay. Well, we've got

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1 to tighten up our act, here.

2 MS. OLSON: Yeah.

3 CHAIRMAN KARLIN: Okay. So, let's see.
4 Seven minutes, and my math, thirteen minutes on your
5 direct, then. Okay. Please proceed.

6 MS. OLSON: Okay. Contention 3, and I
7 do want to associate this contention with our
8 expert, Leon Jacobs, and we will get you his CV.
9 It's important to note that he has a long history of
10 energy profession in the state of Florida. I'm
11 being kind of general there, but anyway.

12 And I learned a lot by working on this
13 contention. And I learned a lot this morning
14 reviewing this contention. So, I do not pretend to
15 be your expert here. But it all wields on 10 C.F.R.
16 part 50.33 (f)(1). And I believe the words that we
17 are really focused on is reasonable assurance of
18 either having the funds to do this project or the
19 ability to get those funds.

20 And then what I really learned this
21 morning, re-reading these documents, is that
22 ultimately -- I mean, I've seen this text before,
23 I've worked with it, but I hadn't fully understood
24 that this argument in some way goes to the fact that
25 unless you're going to do what the Pope did to the

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1 people of Perugia, Italy, and wall in their portion
2 of the city so they shall never see the sun again,
3 that the competitor ultimately to this project is
4 the ability of people, even in a regulated utility
5 area, to decide to produce their own power and
6 potentially go off grid and/or reduce their
7 consumption.

8 So we fundamentally have, in this
9 contention, brought to you in the language that we
10 gave you, a challenge to the first question, which
11 is: How much is the thing going to cost? Because if
12 we're going to talk about do they have the money, we
13 have to know how much they need.

14 And then secondly, what is the
15 credibility that they either have or are going to
16 get.

17 And then thirdly, we devolve down to the
18 fact that they need co-investors. And who are the
19 co-investors going to be but either the municipal
20 utilities of the state of Florida, or some other
21 state that maybe they will rope in. I don't know.
22 We've got municipal utilities investing in Georgia,
23 so maybe that could happen. I don't know. I don't
24 want to put any boundaries here.

25 But fundamentally, it goes down to the

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1 state statue that says that the consumer will be the
2 co-investor in the quipped provisions of early cost
3 recovery. And if you don't think that's going to
4 drive energy efficiency, I think you better really
5 look closely at this whole picture. Because you've
6 got to ask yourself: Is it reasonable to assume that
7 they're going to get the money? That's where we are
8 at.

9 CHAIRMAN KARLIN: Well, let me ask this.
10 Progress Energy says, at page thirty-one of its
11 brief, that the ER clearly has the cost estimate of
12 the project. \$16.6 billion. In the ER it's at page
13 10-71. What's the beef? There they are. They have
14 an estimate. You said they didn't have an estimate.
15 They do have an estimate. \$16.6 billion.

16 MS. OLSON: Well, that's basically what
17 we acknowledged was the ballpark figure as well. So
18 I allow that we may have missed that page in their
19 submission. But we basically pegged it at the same
20 number that went before the Public Service
21 Commission, which is just slightly over that.

22 And, you know, we can all get into a
23 discussion of reality versus projection. And
24 certainly the case is there for what's happening in
25 Finland and what has happened in the past in the

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1 United States in terms of before the shovel and
2 after the shovel.

3 CHAIRMAN KARLIN: Well, hasn't the
4 Florida Public Services Commission already said that
5 they have -- they're good to go, vis-a-vis the
6 finances?

7 MS. OLSON: No. Actually, they didn't
8 say that. They said: You need more co-investors and
9 you come back to us on an annual basis and tell us
10 how you're doing.

11 And they're going around right now to
12 all the municipal utilities and the municipal
13 utilities are looking at it. And they are going to
14 go to the Florida Municipal Utility Association next
15 month and, you know, they're working on it. But we
16 contend that you really have to balance that against
17 the fact that all of that is based on consumption
18 projections and early cost recovery. It's not
19 actual dollars in investment.

20 CHAIRMAN KARLIN: Well, we're not here
21 to assess the financial wisdom of this project. We
22 are not here -- the NRC does not regulate that
23 issue.

24 MS. OLSON: We know that.

25 CHAIRMAN KARLIN: And if they lose their

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1 shirt, you know, it's their problem. All our Regs
2 ask us to do is deal with, to make sure that they
3 have enough money, that they've estimated and they
4 have enough money to deal with any health or safety
5 issues that might arise.

6 So if they get three-quarters through,
7 or ninety-nine percent through the construction of
8 this facility and they halt and they go bankrupt, it
9 is not our concern, quite frankly, because they have
10 not put any radioactive material on the site, and
11 there is no radiological damage that's going to
12 arise.

13 I mean, they have -- that's an
14 overstatement. It is our concern, because obviously
15 they have to clean up a bit of what they've done.
16 But we just -- the NRC does not regulate whether or
17 not the financial markets, or what the stock market
18 is doing, or what they're doing in France. So we
19 don't have the authority to deal with that.

20 MS. OLSON: We understand that that is
21 beyond your arm. But may I read this?

22 CHAIRMAN KARLIN: Sure. What have you
23 got?

24 MS. OLSON: Fifty -- what is it? 10
25 C.F.R. -- I made the same mistake; it should be

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1 Part. 50.33(f). And taking a section of it, it
2 says that -- I should've brought my glasses. Okay.

3 "If the Applicant has a construction
4 permit the Applicant shall submit information ..."
5 so this is in the future, thank you "...that
6 demonstrates that the Applicant possesses or has
7 reasonable assurance of obtaining the funds
8 necessary to cover estimated construction costs and
9 related fuel cycle costs." Not just construction.

10 CHAIRMAN KARLIN: And if they lose their
11 shirt, you know, and they don't make enough money,
12 or if the rate payers have to pay more money or less
13 money, how is that our concern? All we need to know
14 is whether or not they have enough money to clean up
15 the place if they make a mess.

16 MS. OLSON: Well, it says you need to
17 know they have enough money to build it.

18 CHAIRMAN KARLIN: To operate safely. To
19 build and operate safely. We are certainly not
20 financially -- we have no financial experts on this,
21 but we have, you know, a physicist and a geologist
22 and a lawyer. This is -- I don't know, you know,
23 how we -- it seems most of your contention raises:
24 Well, the costs are uncertain; the costs are
25 changing.

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1 They have an estimate. They've given an
2 estimate and they have come up with a mechanism to
3 say: And this is how we're going to fund that money.
4 And we need to look at that and say: Okay, they've
5 got it. How are they deficient?

6 MS. OLSON: Well, it's my understanding
7 that this contention would actually bear when NRC
8 staff makes a finding under 50.33(f). Right?

9 CHAIRMAN KARLIN: Well, I'm not sure.
10 If that's the contention then it's probably not
11 admissible at this stage at all. If you're waiting
12 until the staff making a finding, well, the staff is
13 not us. They make a finding and you don't like it,
14 then you file a new contention maybe, or something.
15 But right now it is just: Does the application have
16 in it what the application Regs say it has to have
17 in it?

18 MS. OLSON: I'm going to, then, submit
19 to what a different honorable member of the ASLB
20 submitted to a panel at one point that I was in
21 front of. That if you were representing us, you
22 guys were our lawyers. So, like we're too early
23 with this. When will we not be too late in the
24 future?

25 CHAIRMAN KARLIN: I'm not saying you're

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1 too early; I'm not saying you're too late. What we
2 look at is what is the regulation required to be in
3 the application. And you come in and say: There is
4 a requirement in the Regs that says the application
5 must contain X, and it doesn't contain X. Then we
6 say: Oh, well, this is an issue. Let's admit the
7 contention.

8 I mean, so we look at what does the Reg
9 -- so all we can go is what the Regs say, and what
10 the application must contain, and you say it doesn't
11 contain it or it doesn't contain an adequate
12 discussion. Maybe you're saying the estimate is
13 adequate in some respect and we need to know in what
14 respect is it inadequate.

15 MS. OLSON: The reasonable assurance
16 part is inadequate.

17 ADMIN. JUDGE BARATTA: Well, I'm really
18 confused by that. If you take a look at your own
19 filing -- let's see, it is page twenty-one. You
20 make a statement regarding Florida section 366.93.
21 "Florida statutes, in 2006, requiring regulators to
22 address nuclear construction costs annually. This
23 provision allows pass-through recovery of early
24 costs of nuclear power development which was tied to
25 site selection, deposits for large equipment, costs

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1 to file for construction, and operating license with
2 the U.S. Nuclear Regulatory Commission, as well as
3 interest. These costs are being collected now and
4 if the legal authorization continues, will be
5 expanded annually for the projected seven years
6 before Levy Units 1 and 2 become operational.

7 Now, from that, it seems like, if
8 anything, they've got a guarantee they're going to
9 get the money.

10 MS. OLSON: If people use the power.
11 It's all tied to people using the power. And
12 population is actually beginning to shrink in
13 Florida; people are beginning to be more efficient
14 in Florida. And there is a strong reaction to being
15 taxed, which is exactly what this is. They are
16 being taxed.

17 And I'm not saying that's your worry,
18 you don't have authority over it. But in terms of
19 reasonable assurance, I think you have to stand back
20 and look at it and ask is it reasonable; to be
21 assured that this is actually going to stand up
22 against demand side management stuff that people
23 will do on their own.

24 I'm not asserting any kind of like
25 organized thing, but people do not -- I mean, I'll

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1 just give you a personal example.

2 My husband lived during the years of
3 construction of the Vogel reactors in Georgia,
4 twenty miles away. He is very conscious of how much
5 electricity he uses down to the exact kilowatt hour.
6 When those reactors came on line his bill tripled.
7 Tripled.

8 CHAIRMAN KARLIN: At some point you talk
9 about rate payer shock. I'm trying to find the
10 exact quote. But, you know, talking about the rate
11 payers are concerned and, okay, and that the cost
12 will go up.

13 But doesn't the fact that there is a
14 Florida statute that says the company can begin
15 collecting money from the rate payers now enhance
16 their ability to prove their financial wherewithal?
17 I mean, that's a tremendous boost to them. Now, if
18 Florida wants to change that law, they can change
19 that law. But right now there is a law that says
20 the rate payers are going to start paying for this
21 facility now, even though it hasn't been built.
22 That helps them tremendously and it secures their
23 finances. So there is a -- it seems a cut against
24 you.

25 MS. OLSON: I'm suggesting to you that

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1 it will be the basis for the exact outcome we want
2 to see happen. So I'm actually thrilled.

3 CHAIRMAN KARLIN: Well, costs go up and
4 people start conserving.

5 MS. OLSON: Yes, yes.

6 CHAIRMAN KARLIN: Well, that's fine,
7 but that doesn't mean that the facility will -- you
8 know, there's a need for the facility. The Florida
9 Public Service Commission has already said there's a
10 need for a facility. They've ruled that on August
11 12, '08. We're not here to judge that. They've
12 already ruled on that.

13 MS. OLSON: I understand.

14 CHAIRMAN KARLIN: And they have a
15 statute that says they can start recovering the
16 money right here and now. That sounds like their
17 finances are pretty well covered in that respect.

18 MS. WRIGHT: Time.

19 CHAIRMAN KARLIN: Go ahead and answer.

20 MS. OLSON: One last little comment. I
21 see that this is where, you know, on the one hand
22 the hydro ecology is a separate item. But the whole
23 issue of zero to two is relevant to our concerns in
24 Contention 7.

25 So I would refer your commentary about

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1 NRC doesn't care if they lose their shirt and don't
2 complete the project, because that is what we do
3 care about in Contention 7. It's not the only thing
4 we care about. Operations also concern us. But
5 that precisely is the weaving at that point.

6 And the other minor additional comment
7 is simply that some of the expert documents that are
8 cited in Contention 3 speak directly to the
9 difference between adding units to an existing site,
10 with one or two reactors at the site already, versus
11 the green field risks. And I bring those citations
12 to your attention in considering this contention.

13 CHAIRMAN KARLIN: Okay. Thank you.

14 Mr. O'Neill?

15 MR. O'NEILL: Mr. Lepre will handle
16 Contention 3.

17 CHAIRMAN KARLIN: Great. Okay. It's
18 Mr. --

19 MR. LEPRE: Lepre.

20 CHAIRMAN KARLIN: -- Lepre. Okay. Very
21 good.

22 MR. LEPRE: Good afternoon Chairman
23 Karlin, Judge Murphy and Judge Baratta.

24 Today's oral argument by Petitioners
25 suffers from the same deficiencies as the petition

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1 and their response.

2 First, Petitioners have never even
3 referenced or challenged the financial plan that
4 Progress provided in the COLA to demonstrate it's
5 financial qualifications to construct Levy. In
6 fact, they never even sought access to the
7 proprietary information that we submitted. For this
8 reason Contention 3 is inadmissible under the
9 Commission's pleading requirement because it fails
10 to raise a genuine dispute with the application.

11 Second, instead of raising health and
12 safety issues that are within the NRC's
13 jurisdiction, Petitioners have raised, and continue
14 to raise today, matters that are outside the scope
15 of this proceeding, such as the potential economic
16 impact of the plant on Florida rate payers, the
17 economic question of whether the plant should be
18 built.

19 Third, Petitioners' raised matters are
20 not relevant to a financial qualification
21 contention, such as the need for power or
22 alternatives to Levy. Certainly those matters may
23 be relevant for other contentions but not for a
24 financial qualification contention.

25 And fourth, the Contention 3 lacks

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1 required factual or expert support.

2 CHAIRMAN KARLIN: And where is that
3 factual or expert support is required?

4 MR. LEPRE: They have to allege facts
5 that support the contention, 2.309(f)(3).

6 CHAIRMAN KARLIN: (4).

7 MR. LEPRE: (4)?

8 CHAIRMAN KARLIN: Well, no. (5),
9 actually. (5).

10 MR. LEPRE: It is(5), but --

11 CHAIRMAN KARLIN: Yeah. I mean, I think
12 it's important in your brief to please distinguish.
13 And it is kind of interesting because in some
14 sections of your brief you used the correct
15 phraseology. "They must provide a concise statement
16 of the alleged facts or expert opinion." In some
17 provisions of your answer you say: "They must
18 provide the facts."

19 And somebody must've been -- you had
20 different people working on different sections, or
21 something, because there is a difference. Just focus
22 on alleged facts.

23 MR. LEPRE: Sure.

24 CHAIRMAN KARLIN: Okay.

25 MR. LEPRE: Since the Board's Order

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1 scheduling order already ask that we not focus, not
2 repeat all of the arguments that we made previously
3 in our brief, there are a few things in Petitioner's
4 response that I would like to address.

5 Actually one I was going to address was
6 the cost estimates. They said our cost estimates
7 were not effective. But here today we heard Ms.
8 Olson say that the cost estimate -- that they missed
9 our cost estimate and they actually agreed with our
10 estimate; their estimate was similar to what they
11 thought.

12 CHAIRMAN KARLIN: Well, let me ask on
13 the cost estimates. It seems to me that there is at
14 least one part of the cost estimate that maybe is
15 missing. I'm not sure.

16 You all talk about: Well, look, we're
17 an electric utility. And under what regulation is
18 it? As an electric utility, 50.33(f) as to -- you
19 don't have to provide information. There is an
20 exception for electric utilities who don't have to
21 provide what the operating costs. So you have not
22 provided that. Is that correct?

23 MR. LEPRE: We have not because the
24 regulation does not require us to.

25 CHAIRMAN KARLIN: Okay. So I think that

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1 their contention was maybe not articulately, but was
2 complaining a bit about that.

3 MR. LEPRE: And they did mention that
4 and we responded to that in our brief, that that was
5 something we --

6 CHAIRMAN KARLIN: You're exempt. You
7 went through a statutory or regulatory exemption
8 argument.

9 MR. LEPRE: Right.

10 CHAIRMAN KARLIN: Yes. Okay. And
11 electric utility essentially means a power provider
12 that is regulated by the Public Services Commission.

13 MR. LEPRE: Rates are.

14 CHAIRMAN KARLIN: Rates are regulated.

15 MR. LEPRE: Correct. So there is the
16 assurance of recovery.

17 CHAIRMAN KARLIN: So because your rates
18 are regulated and because of the regulatory agency,
19 the Florida Public Services Commission will set
20 those rates, you don't have to provide the five
21 years of operating costs that otherwise the NRC Regs
22 would require?

23 MR. LEPRE: That's correct.

24 CHAIRMAN KARLIN: Okay. Could you
25 explain about the cost recovery statute. What is

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1 it? CWIP? I've heard that acronym.

2 MR. LEPRE: Well, the way the cost
3 recovery statute works is, in May --

4 CHAIRMAN KARLIN: And that's a state
5 statute. Right?

6 MR. LEPRE: Correct. It's a state
7 statute and there are regulations that implement the
8 statute. The way that the statute and the
9 regulations work is annually, May 1st, I believe, of
10 each year we have to file two things. One is our
11 estimated pre-construction cost and carrying charges
12 on construction cost, anticipated construction cost.
13 We have to file estimates.

14 And then, in subsequent years we have to
15 file an estimate for the next year then a true-up of
16 the previous year.

17 So May 1 of each year we make these
18 filings. And then in October of each year the State
19 Regulatory Commission rules on the reasonableness of
20 our estimates and the prudence, whether the amounts
21 we actually incurred and are seeking to recover
22 through the cost recovery clause, whether those are
23 prudent.

24 Assuming that those costs are prudent,
25 then we are allowed to recover the cost through a

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1 direct charge on a dollar-for-dollar basis.

2 CHAIRMAN KARLIN: You mean, so assuming
3 the Florida Public Services Commission concludes the
4 charges are prudent, then they allow you, they allow
5 Progress Energy Florida to begin charging its
6 current rate, its current customers for the cost
7 incurred during the construction up to that point or
8 something?

9 MR. LEPRE: Exactly. Exactly right..
10 The statute also provides that if the plant is
11 terminated for any reason, the construction is
12 actually not completed, that we are allowed to
13 recover reasonable and prudent construction cost for
14 work in progress and exit fees as well. So we're
15 also covered in the event the plant does not become
16 operational.

17 CHAIRMAN KARLIN: So if you call it all
18 off halfway through or something, the company still
19 gets to recover its costs?

20 MR. LEPRE: That's correct.

21 CHAIRMAN KARLIN: And the rate payers
22 have paid for something they didn't get.

23 MR. LEPRE: That's -- well cover our
24 reasonable and prudent cost, but that's the law.

25 CHAIRMAN KARLIN: So they take the risk

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1 of the facility not operating, or not being
2 constructed successfully.

3 MR. LEPRE: That's the law.

4 CHAIRMAN KARLIN: Okay. No, I'm just
5 wondering who has got the risk.

6 MR. LEPRE: Yes.

7 CHAIRMAN KARLIN: Okay. Go ahead.

8 MR. LEPRE: The Petitioners argue in
9 their pleadings that they've provided expert
10 analysis demonstrating that we don't have reasonable
11 assurance of collecting the cost. But again, the
12 expert analysis, I'm not sure exactly what they are
13 relying on when they say expert analysis. They've
14 provided a report from Moody's. That's just sort of
15 a generic report that analysis potential risks for
16 people who are constructing nuclear plants. It
17 doesn't have anything to do with -- it's not in the
18 analysis of Progress' financial qualifications; it's
19 not an analysis of the Levy plant, also of general
20 discussion.

21 CHAIRMAN KARLIN: On the cost, \$16.6
22 billion. Hasn't the estimate cost that Progress
23 Energy has announced dramatically increased in the
24 last couple of years? I mean, a year or two ago
25 they were talking about half of that.

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1 MR. LEPRE: The costs have increased.
2 It's the same across the industry. If you look at
3 our estimate versus FPL's estimate, for instance,
4 our estimate tracks with theirs. If you look at
5 some of the other cost estimates -- in fact, some of
6 the things the Petitioners have cited in their
7 brief, our costs are in the same ballpark as those.
8 To answer your question, they have escalated, but
9 not just with Progress.

10 CHAIRMAN KARLIN: Is this Progress
11 Energy Florida facility, proposed facility, Levy
12 County, two units, is there similar corporate
13 ownership for the Crystal River units? You drive by
14 there and it says, you know: Progress Energy Florida
15 as the entrance. Is it the same company?

16 MR. LEPRE: Yes, it is.

17 CHAIRMAN KARLIN: Okay. The notice in
18 the Federal Register uses, as I understand it,
19 Florida Power is the name that's in the Federal
20 Register for the license renewal application there.
21 At least I thought that's what it said. And I was -
22 - I thought they were different companies.

23 MR. LEPRE: My understanding is they are
24 the same.

25 MR. O'NEILL: Your Honor, just to answer

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1 your question. Florida Power Corp was the name of
2 the company, the original licensee on Crystal River.
3 It was acquired by Progress Energy, doing business
4 as Progress Energy Florida.

5 CHAIRMAN KARLIN: I see. Thank you.

6 MR. LEPRE: Thanks.

7 CHAIRMAN KARLIN: Do your cost
8 estimates include decommissioning cost under 50.75,
9 I think it is (d)? Or (b) -- 50.75(b), as in boy,
10 says, "The COL Applicant shall submit a
11 decommissioning report as required by 50.33(k)."

12 MR. LEPRE: The cost estimates we're
13 discussing for this contention are construction cost
14 estimates.

15 CHAIRMAN KARLIN: Yeah. I didn't see
16 that they mentioned decommissioning costs in the
17 contention. I did not see that. But the ER does
18 cover that?

19 MR. LEPRE: The ER does. I'm sure it
20 does. It wasn't something that I focused on but I'm
21 sure it does.

22 ADMIN. JUDGE BARATTA: There was an
23 implication that this contention may not be ripe at
24 this point. That it wouldn't be ripe until sometime
25 when the staff made its finding. Do you agree with

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1 that?

2 MR. LEPRE: No, no, I don't. I mean,
3 this is the opportunity for Petitioners, under the
4 NRC's procedure, to raise contentions, challenges to
5 the application. And under the procedures, now is
6 the time for them to do that. Obviously it is an
7 issue that staff will look at, you know, when it
8 reaches its decision. But now is the point in time
9 where they are entitled to file contentions.

10 CHAIRMAN KARLIN: Well, that's not true,
11 is it? The regs provide for the filing of new and
12 amended contentions under (f)(2) and ©).

13 MR. LEPRE: Correct. They --

14 CHAIRMAN KARLIN: And, in fact, we have
15 Contention 12 which has been filed there. So --

16 MR. LEPRE: They can file a late
17 contention.

18 CHAIRMAN KARLIN: So in that context --
19 and I don't use the word "late," because the Regs
20 never used the word "late." Timely, non-timely. Is
21 it not ripe? And are you -- does the staff have to
22 do something which could then trigger a contention
23 if the staff or the Applicant is somehow deficient?
24 I know that normally the staff is not subject to the
25 contentions.

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1 ADMIN. JUDGE BARATTA: The ripeness
2 question still stands.

3 MR. LEPRE: I mean, I think it is ripe
4 in the sense of at this point in time there is a
5 hearing notice that says you need to file -- that
6 there is a time period within which to file
7 contentions. They can file a untimely contention if
8 there are changed circumstances after they make a
9 pleading and meet the requirements for late filed
10 contentions. It is certainly something they can do.

11 ADMIN. JUDGE MURPHY: In the petition on
12 page twenty-seven, they quote the FPSC to the
13 effect, a PEF -- this is specific to you now. "A
14 PEF should continue to pursue joint ownership
15 opportunities in an effort to further mitigate the
16 initial rate impacts associated with the proposed
17 project."

18 And I'm just curious if you are
19 continuing to pursue those efforts, or if you've
20 made such efforts.

21 MR. LEPRE: Progress is actively pursuing
22 efforts for joint owners. We're in the negotiation
23 stage of that. There's not a requirement -- the
24 FPSC didn't make it a better requirement or a
25 condition; they certainly encouraged Progress to do

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1 it. Progress is in the process of doing that.
2 That's not something, by the way, that's in our
3 financial plan. It is something that we've
4 determined is required for us to finance the plant,
5 but it is something we are actively doing.

6 CHAIRMAN KARLIN: Any more questions?

7 (No response.)

8 CHAIRMAN KARLIN: We don't have any more
9 questions, so thank you, Mr. Lepre.

10 MR. LEPRE: Thank you.

11 CHAIRMAN KARLIN: Staff?

12 Ms. Kirkwood, right? Ten minutes, yes.

13 MS. KIRKWOOD: Sara Kirkwood for the NRC
14 staff.

15 CHAIRMAN KARLIN: Okay.

16 MS. KIRKWOOD: Your Honor, the staff
17 believes, as stated in its filing, that this
18 contention is outside -- largely outside the scope
19 of the proceeding. It raises issues that are
20 properly put before other regulatory agencies.

21 And, we will be happy to answer any
22 questions that you may have.

23 CHAIRMAN KARLIN: How does the staff
24 deal with the decommissioning cost? Is that a
25 requirement here at this stage, 50.33(k)?

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1 MS. KIRKWOOD: I just got a tipoff that
2 you were going to about that when you started
3 questioning Mr. Lepre. And I have to admit, since
4 that wasn't something raised by the petition, that
5 it wasn't --

6 CHAIRMAN KARLIN: Yes. I just was
7 curious.

8 MS. KIRKWOOD: I believe there is -- we
9 expect an indication -- I do not believe the staff
10 is making -- and now I'm going back to my memory of
11 reviewing staff financial assurance documents, that
12 we are making a finding on decommissioning assurance
13 at this COL stage. But if you want something for us
14 to brief later, we could. It's just that it never--

15 CHAIRMAN KARLIN: No. I just had that
16 question.

17 MS. KIRKWOOD: It's in 50.75 where we go
18 through.

19 CHAIRMAN KARLIN: Okay. Do you have any
20 questions for staff?

21 (No response.)

22 CHAIRMAN KARLIN: You're going to get
23 off easy. We don't have any questions for the staff
24 at this point. So, we'll thank you.

25 MS. KIRKWOOD: Thank you.

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1 CHAIRMAN KARLIN: Ms. Olson has got
2 seven minutes, seven minutes.

3 MS. OLSON: One little point that --
4 you're going to receive his CV, but I will simply
5 state that Leon Jacobs, whose declaration you do
6 have, it's just that the CV was to be an attachment
7 and I notice that it wasn't there. And you will
8 have it. But he is the former chair of the Public
9 Service Commission for Florida, three governors
10 back. So I think he's an expert.

11 In our reply brief to the answers, we do
12 go into the Appendix B of the application which
13 includes 10-k citations, and we quote some of those.
14 One of which is the invocation by the Applicant of
15 the Energy Policy Act of 2005, with a recognition
16 that it is limited to the first 6,000 megawatts of
17 nuclear generation.

18 And who knows how these racehorses are
19 going to line up on the field once they actually get
20 into construction. I don't know at what point those
21 megawatts are determined; probably when they come
22 actually into production. Who knows who is going to
23 get there first.

24 But I count twelve reactors in COL ahead
25 of these guys. So they are kind of far back in the

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1 pack for that one. And this is just all on the
2 issue of assurance of financial qualification.

3 And, indeed, they recognize in their 10-
4 k statement that, you know, successful negotiation
5 of further investment, and joint ventures or joint
6 ownerships also present risks and uncertainties, et
7 cetera, et cetera. I'm not saying that they are
8 necessarily undercutting themselves. I'm just
9 saying that these are all somewhat hypothetical at
10 this point.

11 And what else did I write down here?
12 Okay. Do you have any questions for me? I think
13 that's what I had written down in their commentary.

14 CHAIRMAN KARLIN: I'm not sure. Any
15 more questions?

16 MS. OLSON: I think our fundamental
17 questions still goes to -- oh, I remember. That was
18 the other thing.

19 I agree with the Applicant that we
20 concurred on numbers in terms of on paper. We don't
21 concur in terms of actual numbers. In other words,
22 our contention is questioning the veracity of their
23 ability to project cost and raising, therefore, the
24 question about a reasonable assurance when you
25 haven't really adequately addressed what are those

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1 real costs going to be. So I want to clarify that
2 we don't agree overall on the question of cost. We
3 may agree on particular numbers on different pieces
4 of paper. But those are pieces of paper; not actual
5 what is this actually going to take.

6 CHAIRMAN KARLIN: Well, I think that the
7 Applicant points out that, you know, the need for
8 power. And they say the Regs don't require a
9 showing of a need for power for the financial Regs,
10 50.33, you know, (f) and (k). And so how can we get
11 into that? Why do you get into that in this
12 contention?

13 MS. OLSON: We don't. We assert that
14 it's already been approved, like you're telling me.
15 And what we are saying is that they're hanging their
16 financial hat on the consumption of power rather
17 than the investment of Wall Street, or the Energy
18 Policy Act that might hand them a check in the mail.
19 They're hanging their hat on consumption. And,
20 therefore, you have to look at whether that's real
21 when they are also jacking up the price on that
22 consumption.

23 CHAIRMAN KARLIN: But don't they have
24 the Florida Public Services Commission that will set
25 a rate that will allow them a recovery?

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1 MS. OLSON: Unless they are going to
2 build a wall like the Pope did in Perugia and block
3 out the sun, I submit to you, or make it illegal to
4 sell compact fluorescents and LED's in Florida, I
5 submit to you that this is somewhat risky.

6 CHAIRMAN KARLIN: Well, it seems to me
7 that if the Applicant is willing to take that risk,
8 the question is, are we --

9 MS. OLSON: Yeah. And they just could
10 walk away.

11 CHAIRMAN KARLIN: What is NRC supposed
12 to say? And the Florida statutes allow them to
13 recover those costs. Is the NRC to say: Oh, the
14 risk of people conserving is so high that they
15 cannot provide the financial assurance that they
16 will protect public health.

17 MS. OLSON: I say you're making a major
18 federal action and this contention is part of why we
19 are here.

20 CHAIRMAN KARLIN: Right. A major
21 federal action significantly affecting the
22 environment is a phrase that comes up under NEPA.
23 This is not a NEPA contention.

24 MS. WRIGHT: Two minutes.

25 MS. OLSON: Do we honestly say that it

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1 is not under NEPA? I think we do say it is under
2 -NEPA.

3 CHAIRMAN KARLIN: But this contention is
4 not under NEPA. This contention --

5 MS. OLSON: I think we do say that it's
6 under NEPA.

7 CHAIRMAN KARLIN: -- is the Atomic
8 Energy Act, and under Section 50.33, which has got
9 nothing to do with NEPA. That's why --

10 MS. OLSON: And our contention says that
11 there is also the obligation under NEPA that this is
12 a major federal action.

13 CHAIRMAN KARLIN: Okay. Show us that.

14 ADMIN. JUDGE BARATTA: Your contention
15 says: The Applicant does not meet the financial
16 qualification requirements of 10 C.F.R 50.33.

17 CHAIRMAN KARLIN: Nothing in NEPA about
18 that.

19 ADMIN. JUDGE BARATTA: That appears on--

20 MS. OLSON: Okay. All right. It's in
21 the discussion. It's not at the first line. You're
22 right. But it is in the discussion and I can find
23 it for you in a minute when I'm not struggling with
24 my bifocals. I'll tell you the page. You want me
25 to stand here and find it?

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1 CHAIRMAN KARLIN: Yes. This is the end
2 of this one. We'll move on to another one.

3 MS. OLSON: Okay. I still haven't had
4 the time called yet. Right?

5 CHAIRMAN KARLIN: No.

6 MS. WRIGHT: Fifty seconds.

7 MS. OLSON: Fifty seconds. All right.
8 It's a race.

9 CHAIRMAN KARLIN: Well, I'll tell you
10 what we will do. We will complete this contention.
11 And if at the beginning of your next discussion you
12 have a citation for that, you know, you can give it
13 to us then, you know.

14 MS. OLSON: Okay.

15 CHAIRMAN KARLIN: What I think we ought
16 to do, it is ten of 5:00 by my watch. We probably
17 have one more contention before we go home tonight,
18 Contention 5.

19 MS. OLSON: Oh, but that one is going to
20 be really short, I think.

21 CHAIRMAN KARLIN: It may be. It may be.
22 Let's take a ten minute break and then we will
23 reconvene at 5:00 or so and go on to Contention 5.

24 MS. OLSON: Thank you, sir.

25 CHAIRMAN KARLIN: Thank you, Ms. Olson.

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1 (Off the record, 4:50 p.m.)

2 (Back on the record, 5:00 p.m.)

3 CHAIRMAN KARLIN: Please be seated.

4 Okay. Now, we're turning to Contention
5 Number 5, as set forth in the Order, our Order of
6 April 3rd, and as I understand it this Contention
7 deals with the proximity of the proposed L and P,
8 the Levy Nuclear Power Plant site the Crystal River
9 Nuclear Power Station.

10 So, Ms. Olson, you have 20 minutes. How
11 do you want to allocate your direct and rebuttal?

12 MS. OLSON: Let's do 10 and 10.

13 CHAIRMAN KARLIN: Okay. Fine.

14 MS. OLSON: This stands as a Contention
15 of Omission, and it is. It is not included in the
16 SAMA analysis that I could find. Looked and looked
17 and looked.

18 However, I have to say that I was deeply
19 disappointed that the expert that I was waiting for
20 did not make the deadline. And then what I had
21 sincerely hoped would be a legitimate, you know,
22 piece of new information that would allow me to
23 bring him back in, actually was not. So I cannot
24 expand this contention beyond what it is.

25 But it is a Contention of omission, and

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1 I'll just state that the -- well, I don't know, this
2 is out of bounds. But the broader concern that I
3 had hoped would be developed is the difference
4 between the AP-1000 and the Crystal River CREC,
5 Crystal River Energy Complex, in terms of the
6 provision for things like control room ventilation,
7 etcetera. You know, the supposition is the AP-1000
8 can't have an accident that requires all that. But
9 here we've got one that, you know, is Babcock
10 Wilcox, same design as Three Mile Island. History
11 that that one burped. You know, it's right next
12 door and you haven't considered it. So, that's
13 basically it.

14 CHAIRMAN KARLIN: Go ahead.

15 ADMIN. JUDGE BARATTA: No, go ahead.

16 CHAIRMAN KARLIN: You got the power. Go
17 ahead.

18 CHAIRMAN KARLIN: All right. Well,
19 let's go to your page 72. You seem to have a two
20 part -- two parts of this very pithy contention,
21 less than one page.

22 But you first kind of say: "To date
23 there is not an updated PRA" Probable Risk
24 Assessment, "for Rev 16 as incorporated in PEF's
25 COLA." "Therefore the entire SAMA section does not

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1 appear to be relevant at this time."

2 Are you saying that their application
3 doesn't have a Probable Risk Assessment in it?

4 MS. OLSON: I'm saying that they haven't
5 given us what they're going to rely on.

6 CHAIRMAN KARLIN: Does their application
7 have a Probable Risk Assessment in it? That's what
8 I'm trying to figure out. And I think it does, but
9 I don't know.

10 MS. OLSON: It does. But they are in
11 the process in updating, and now there's a new
12 Revision 17 that also will be an update. So we
13 don't have all that.

14 CHAIRMAN KARLIN: But at this moment in
15 time they have an application and it has a Probable
16 Risk Assessment in it.

17 MS. OLSON: Yes.

18 CHAIRMAN KARLIN: And you're just saying
19 there's something wrong, inadequate about it?

20 MS. OLSON: Well --

21 CHAIRMAN KARLIN: And the question is,
22 what is inadequate.

23 MS. OLSON: -- if that's what they were
24 going to using in the end, we'd deal with it. But
25 they're not telling us that. They're telling us

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1 that they're going to be changing it. And so, you
2 know, it's like --

3 CHAIRMAN KARLIN: Well, when did they
4 say they were going to change it?

5 MS. OLSON: Well, they've incorporated
6 Revision 16, and now there's a Revision 17. And
7 they said they were going to incorporate Revision
8 17.

9 CHAIRMAN KARLIN: And they don't have
10 to.

11 MS. OLSON: They don't have to.

12 CHAIRMAN KARLIN: Let's put it in a
13 broader context. Many times in any application we
14 get -- I mean NRC gets, their staff gets, we don't
15 get it -- it's submitted and then the applicant
16 amends its application, you know. I mean they
17 change something.

18 MS. OLSON: Sure.

19 CHAIRMAN KARLIN: Maybe they change it
20 in response to a contention or a concern.

21 MS. OLSON: Sure.

22 CHAIRMAN KARLIN: But they change it and
23 they change it and they change.

24 MS. OLSON: Right.

25 CHAIRMAN KARLIN: And this can be a

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1 problem because they keep changing it. But at any
2 given moment of time they do have an application,
3 and the fact that they may change it or likely to
4 change it, you know, kind of -- well, until they do,
5 unless and until they do we have to deal with what
6 their application actually looks like and what it
7 actually says today, at this instant in time.

8 MS. OLSON: I concur. But I still say
9 that their SAMA analysis doesn't have any reference
10 to Crystal River in it.

11 CHAIRMAN KARLIN: Well, okay. That
12 seems to be the second half of your contention.
13 First you have sort of this general thing that the
14 entire SMA isn't relevant at this time, and then you
15 go on to say, oh what, there's a striking admission
16 now. In addition to that there's a striking
17 omission.

18 And that is that: "there is no
19 consideration to of the impact of a severe
20 radiological accident at Crystal River Energy
21 complex. An accident at the nuclear unit at Crystal
22 River Energy Complex could disrupt normal operations
23 at Levy County units 1 and 2..."

24 So, are you complaining -- is the
25 contention that the severe accident of mitigation

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1 analysis for the Levy facility needs to consider
2 what would happen if something happened at Crystal
3 River?

4 MS. OLSON: If a severe accident
5 happened.

6 CHAIRMAN KARLIN: That the severe
7 accident happened where?

8 MS. OLSON: At Crystal River, it could
9 have impact on normal operations at Levy.

10 CHAIRMAN KARLIN: But Crystal River has
11 its own severe accident mitigation analysis, which
12 is not our problem.

13 MS. OLSON: Which obviously did not
14 include an assessment of the impact of a severe
15 accident at Levy 1 and 2 on their normal operations.

16 CHAIRMAN KARLIN: Well --

17 MS. OLSON: They were not in their
18 consideration today.

19 CHAIRMAN KARLIN: Right. They have to
20 do their SAMA.

21 MS. OLSON: They have to do their SAMA.

22 CHAIRMAN KARLIN: Levy or Progress
23 Florida has to do a SAMA for this site.

24 MS. OLSON: Right.

25 CHAIRMAN KARLIN: And they've done one.

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1 You're saying that what they're missing is dealing
2 with --

3 MS. OLSON: A scenario.

4 CHAIRMAN KARLIN: -- a scenario whereby
5 the Crystal River could impact Levy.

6 MS. OLSON: Exactly.

7 CHAIRMAN KARLIN: Whether it's a severe
8 accident at Crystal River or non-severe accident at
9 Crystal River, it should be incorporated in the
10 severe accident analysis at Levy.

11 MS. OLSON: Yes.

12 CHAIRMAN KARLIN: Okay. Now, aren't
13 there a whole bunch of sites? You've referred to
14 them, where there are multiple units. There's two
15 units on the site and then they apply for a third
16 unit or a fourth unit.

17 And hasn't this same issue come up and
18 they said, well, oh, when you're going to add a new
19 unit you have to deal with the impact on the control
20 room of the new unit on the old unit and the old
21 unit on the new unit and all that stuff.

22 MS. OLSON: You know what. There isn't
23 a pot of money. There's like two, maybe three
24 interventions that have had attorneys like working
25 on them. And so the low hanging fruit is where the

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1 pro se's go. And you have to have a lot of
2 expertise to go into all that stuff.

3 CHAIRMAN KARLIN: Okay.

4 MS. OLSON: The reason I didn't pull
5 this out completely was how bad I would feel to have
6 zero nuclear safety element of this.

7 CHAIRMAN KARLIN: Well --

8 MS. OLSON: Let me just finish this
9 sentence.

10 This is like a testament, right? We
11 hope it's not our last. But, you know, it's like
12 coming in this room and this courtroom and bringing
13 these issues. I'd of pulled this out, except for at
14 11:59 I went, no, there has to be something on
15 safety. I'm not pulling it out. So it's still
16 here. And it is legitimately a contention of
17 omission in terms of their analysis of severe
18 accident.

19 CHAIRMAN KARLIN: Okay. But just let me
20 clarify. This contention does not cover, by any
21 words I see, that you're saying that the Levy's SAMA
22 has to deal with its impact on Crystal River.
23 You're dealing with the impact of Crystal River
24 could have on Levy.

25 MS. OLSON: Exactly.

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1 CHAIRMAN KARLIN: Okay. Okay.

2 MS. OLSON: Can your control room
3 continue to function if its to the level where
4 people should ought to evacuate, and if -- I mean
5 I'm not getting into all the -- I don't know how to
6 tell you what it could be.

7 But if you're got Three Mile Island
8 happening 9.6 miles away, and then the wind is
9 blowing because, you know, it's not like this is up
10 wind. I mean, it's not. This is down wind, under
11 most scenarios. So, you know, like what does that
12 look like? They should analyze it.

13 CHAIRMAN KARLIN: Okay.

14 THE CLERK: Two minutes.

15 CHAIRMAN KARLIN: Any questions?

16 ADMIN. JUDGE BARATTA: No.

17 CHAIRMAN KARLIN: No questions at the
18 moment. Anything more you want to say or shall we
19 proceed to next --

20 MS. OLSON: Just I'm heartbroken that I
21 didn't get an expert and it would be a lot more fun
22 to talk about the AP 1000 design and I can't do it,
23 and I'm sorry.

24 CHAIRMAN KARLIN: All right. Mr.
25 O'Neill or Mr. Lepre.

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1 (Pause.)

2 CHAIRMAN KARLIN: Yes. Proceed, Mr.
3 O'Neill.

4 MR. O'NEILL: Chairman, Dr. Baratta and
5 Dr. Murphy.

6 This is a straight, everyone of F-1
7 subparts tests that fails, as we noted in our
8 Answer, and there was no reply. Just to go to the
9 specific fact that's wrong, there is a PRA in this
10 application. It is FSAR Chapter 19. The SAMAs are
11 in environmental section chapter 7. That was
12 performed. We have no cite to something that was
13 inadequate in that PRA -- NERA or the FSAR.

14 To the extent that there is a hypophysis
15 that we have omitted a discussion of Crystal River,
16 I guess that's right. But there's no reason for us
17 to include a discussion of Crystal River. You don't
18 -- I mean in the Harris Units 2 and 3 application
19 that we filed, we did not talk about Harris Unit 1
20 as being a hazardous facility that would affect this
21 plant.

22 CHAIRMAN KARLIN: Well, let me back up.
23 First, with regard to the PRA. There is a PRA in
24 the application, is what you're saying?

25 MR. O'NEILL: FSAR Chapter 19 Yes, sir.

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1 CHAIRMAN KARLIN: And is that a PRA
2 founded upon the Westinghouse Certified Design?

3 MR. O'NEILL: Upon the Westinghouse
4 Certified Design as amended in 16, and actually it
5 took into account certain of the things that are now
6 in 17. But, yes, there is one.

7 CHAIRMAN KARLIN: And in the
8 application, you know, contains this PRA.

9 MR. O'NEILL: It does.

10 CHAIRMAN KARLIN: Is it actually -- is
11 the PRA actually in there or is it simply cross-
12 referenced to --

13 MR. O'NEILL: There is one in there.

14 CHAIRMAN KARLIN: -- go see it over in
15 the design control or whatever the Rev 15 or 16.
16 It's actually in there?

17 MR. O'NEILL: It's a site specific
18 analysis extending the AP 1000 PRA to Levy.

19 CHAIRMAN KARLIN: Yes. Okay. I thought
20 so, I wasn't sure.

21 Okay. I'd like you to turn to page 158
22 of your brief, please. I am concerned with your
23 argument that there's no reason why they should
24 consider this.

25 MR. O'NEILL: Well.

1 CHAIRMAN KARLIN: The striking omission
2 they refer to. Now, going from the general argument
3 to the specific alleged omission, which is, well,
4 you didn't take into account in your SAMA analysis,
5 so they seem to be alleging, that there's a nuclear
6 facility just down the road and that could cause --
7 if something has a problem over there, that could
8 cause an accident or contribute to an accident or a
9 severe accident over here at Levy.

10 MR. O'NEILL: I have no idea, to be
11 honest, how I would even answer that question. If
12 you had Three Mile Island next to this plant,
13 nothing would affect the operation of Levy Units 1
14 and 2.

15 CHAIRMAN KARLIN: Well, you say in this
16 paragraph, page 158, I guess the middle paragraph.

17 "Petitioners do not demonstrate that any
18 analysis of an accident at Crystal River Unit 3 is
19 material to the NRC decision, as required..." "Other
20 than baldly alleging" blah, blah, blah.

21 And you say, "In fact, NRC guidance
22 states that a study of hazardous facilities within
23 five miles of the project is adequate." Reg. Guide
24 1.206 Section C.I.2.2."

25 That Reg. Guide doesn't say that. Do

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1 you have that Reg Guide in front of you?

2 MR. O'NEILL: Not in front of me, but I
3 can grab it.

4 Assuming this is a hazardous facility,
5 which I wouldn't concede, but even if it were.

6 CHAIRMAN KARLIN: Right.

7 MR. O'NEILL: Let me find it. I'll be
8 happy to look at the Reg. Guide.

9 CHAIRMAN KARLIN: Yeah. The Reg. Guide,
10 I think it's on page C.1.2-4, is what I'm looking
11 at. Maybe that's the correct version.

12 MR. O'NEILL: C.1.2-4.

13 CHAIRMAN KARLIN: And it has a Section
14 C. -- I don't know if that's a 1 or an (i).2.2:

15 "Nearby industrial transportation in
16 military facilities." Right? You with me?

17 MR. O'NEILL: I'm with you, sir.

18 CHAIRMAN KARLIN: You say, quote, "NRC
19 guidance states that a study of hazardous facilities
20 within five miles of the project is adequate."

21 Look at the footnote. The footnote
22 says: quote, "Applicants should consider all
23 facilities and activities within five miles of the
24 nuclear plant, and include facilities and activities
25 at a greater distance as appropriate based on their

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1 significance."

2 MR. O'NEILL: Right. I would say
3 there's no significance of being right next to
4 nuclear plant, much less 9.6 miles away.

5 CHAIRMAN KARLIN: But it doesn't say, as
6 you say, "NRC guidance states that a study of
7 hazardous facilities within five miles" is adequate.
8 It says, all facilities within five miles; right?
9 It doesn't say hazardous. It says, all facilities
10 within five miles, and, "at a greater distance as
11 appropriate based on their significance."

12 And you're saying a nuclear facility is
13 not significant.

14 MR. O'NEILL: I'm saying two things.
15 One, this is in a section, that footnote is in a
16 section which tells you to look at hazardous
17 facilities. So you're looking only at a facility
18 that comes in the definition in the first place.

19 CHAIRMAN KARLIN: Well, no. It doesn't
20 say hazardous. It says, "nearby industrial
21 transportation and military facilities." It doesn't
22 say hazardous.

23 MR. O'NEILL: Right. Five miles for any
24 of those types of facilities.

25 CHAIRMAN KARLIN: Well, it says "all

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1 facilities."

2 MR. O'NEILL: No, no. I would disagree
3 with your reading of the footnote, sir.

4 CHAIRMAN KARLIN: "All facilities and
5 activities."

6 MR. O'NEILL: If they are significant
7 and they are included in that laundry list that
8 we're looking at in this Section.

9 CHAIRMAN KARLIN: So you're saying a
10 nuclear facility, which you admit is 9.6 miles away
11 --

12 MR. O'NEILL: Right.

13 CHAIRMAN KARLIN: -- is not significant
14 for purposes of this?

15 MR. O'NEILL: Absolutely not. And it
16 wouldn't be if it's next to it.

17 CHAIRMAN KARLIN: Now, isn't there a Reg
18 that says all nuclear facilities have to have an
19 emergency planning zone of ten miles? Ten miles.

20 MR. O'NEILL: They have to have an
21 emergency planning zone, that's correct, for
22 evacuation. But that has nothing to do with the
23 operation of a facility. It's two miles away, one
24 mile away.

25 ADMIN. JUDGE BARATTA: Wait, wait, wait.

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1 If you have an evacuation you're going to tell me
2 that the workers out here are going to be able to
3 get in there? Bull shit.

4 MR. O'NEILL: Sorry?

5 ADMIN. JUDGE BARATTA: Bull. If you
6 have an evacuation because something happens at
7 Crystal River --

8 MR. O'NEILL: Right.

9 ADMIN. JUDGE BARATTA: -- that's not
10 going to impact the ability of a worker to get in
11 here?

12 MR. O'NEILL: It's not going to affect
13 the ability --

14 ADMIN. JUDGE BARATTA: -- ability of a
15 worker to get in to work that plant.

16 MR. O'NEILL: -- to operate that plant's
17 --

18 ADMIN. JUDGE BARATTA: Take a look what
19 happened at TMI.

20 MR. O'NEILL: Well, TMI, of course, was
21 on the same island, sir.

22 ADMIN. JUDGE BARATTA: Well, you're
23 still within the emergency planning zone.

24 MR. O'NEILL: I understand. But I would
25 submit that being 9.6 miles away, you're not going

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1 to have an issue, one, safely operating the plant,
2 so you don't need to look at SAMAs for either of
3 these.

4 ADMIN. JUDGE BARATTA: Well, quite
5 frankly, I think the Petitioner's missed the boat on
6 the SAMA analysis.

7 MR. O'NEILL: Okay.

8 ADMIN. JUDGE BARATTA: We'll come to
9 that when we talk to the staff about what a SAMA
10 analysis really constitutes.

11 But I'm really troubled by the fact your
12 statement that, despite the fact they're within the
13 ten mile EPZ, that there would be no impact. I find
14 that a rather, quite frankly, I don't believe that.

15 MR. O'NEILL: Well, the context of
16 course is the contention. Are you saying, could
17 there be -- if you actually had an accident that
18 would have some radiation release, which of course
19 TMI didn't other than de mittimus, okay.

20 ADMIN. JUDGE BARATTA: It had a release.

21 MR. O'NEILL: And certainly they had
22 evacuated, which caused more problems than the
23 accident.

24 ADMIN. JUDGE BARATTA: Well, that's the
25 point I'm trying to get at. I mean what are we

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1 doing there with the impact of something happening
2 there and resulting in something similar to TMI.
3 Which admittedly, from a radiological standpoint,
4 was a non-issue, but it did create problems.

5 MR. O'NEILL: The sentence goes to the
6 allegation in the contention. You've raised a
7 different issue. Emergency planning was not raised
8 here.

9 ADMIN. JUDGE BARATTA: Yes, it was.

10 MR. O'NEILL: The difficulty is getting
11 to work, is not raised here. What we said is with
12 respect to -- the contention was drafted, they went
13 to the SAMA analysis, the PRA. The fact that that
14 is 9.6 miles away has absolutely no impact.

15 I think that is a correct statement any
16 way you look at it. I can come up with a lot of
17 other problems that might occur. That's different.

18 ADMIN. JUDGE BARATTA: The issue was
19 whether or not an accident at Crystal River would
20 have an impact on the safe operation of Levy.

21 MR. O'NEILL: I would say that an
22 accident at Crystal River would not have any impact
23 on the safe operation of Levy, or we should look at
24 it. But it won't.

25 ADMIN. JUDGE BARATTA: And did you

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1 analyze that to see if it would?

2 MR. O'NEILL: Did we analyze it? Here?
3 No. Have we analyzed it at Harris, where we have an
4 operating plant right next to it? You betch'ya.

5 ADMIN. JUDGE BARATTA: Did you analyze
6 it here?

7 MR. O'NEILL: No. Because we -- nor
8 have we analyzed it anywhere else in the country to
9 the extent they asked to do it here, because the
10 answer is, it will not. So you don't go and look at
11 things when you pretty much knew the answer when you
12 go through it.

13 If you've done it at Harris, if you've
14 done it at Lee, if you've done it at Vogel, if
15 you've done it everywhere else and you know the
16 answer, then we're not going to spend a lot of time
17 worrying about the SAMA, worrying about everything
18 else. It is not going to cause an issue.

19 When you have three plants operating
20 together at one site, at Palo Verde, there is not an
21 issue there.

22 CHAIRMAN KARLIN: Okay. I just think
23 that the statement that you made in the brief is
24 problematic and this led me, because you said NRC
25 guidance states, quote: "NRC guidance states that a

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1 study of hazardous facilities within five miles of
2 the project is adequate." And I really don't think
3 you can read that Reg. Guide to say that. I mean.

4 But let's -- I mean look at the Regs.
5 The Regs. say 50.33(g). It says: "Every facility
6 has to have an emergency planning zone of ten miles.
7 100.11(a)(1) says: "Every facility has to have an
8 exclusion area."

9 That you have the control -- the entity
10 has the power to exclude everybody.

11 MR. O'NEILL: And that's the issue when
12 you have co-located plants, is you have to make sure
13 that you have control over your exclusion area, and
14 take that into account. That is correct.

15 CHAIRMAN KARLIN: And this seems to me
16 one I've never seen before, which is -- this is not
17 quite co-located plants. I mean it's not like you
18 got one unit on a piece of property like out at
19 Dominion North Anna, and then you add another unit
20 on that same piece of property or adjacent. This is
21 one that is, quote, "totally independent plant" that
22 just happens to be within ten miles or within
23 radius.

24 MR. O'NEILL: Right.

25 CHAIRMAN KARLIN: Is there any other

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1 that is like that currently? There's two plants
2 within ten miles that aren't co-located, as it were.

3 MR. O'NEILL: No. I think I can fairly
4 say, no.

5 CHAIRMAN KARLIN: But there are some
6 regs and 52.79(a)(5) or (6) you have to have an
7 exclusion area.

8 MR. O'NEILL: That area is generally
9 within the site boundaries.

10 ADMIN. JUDGE BARATTA: Well, yeah, you
11 have to have control to exclude everybody.

12 MR. O'NEILL: Correct. Right.

13 CHAIRMAN KARLIN: How do I know that the
14 exclusion area is not 9.6 miles?

15 MR. O'NEILL: Well, it's not.

16 CHAIRMAN KARLIN: I don't know. It
17 depends on how fast --

18 MR. O'NEILL: The exclusion area is
19 certainly not the area of evacuation zone. It's
20 literally -- I will tell you I have not looked at
21 precise -- the exclusion area at Crystal River, but
22 it is not going to be, from every other plant that
23 I've worked on, very large.

24 CHAIRMAN KARLIN: Well, I just at, you
25 know, you're quoting, "Petitioners don't

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1 demonstrate why any analysis of accident at Crystal
2 River is material at all." Well, it seems to me
3 you've got the 10 mile emergency planning zone, you
4 got exclusion areas, and you've got 50 mile for
5 various plume issues, or contaminate. You know,
6 they certainly would have standing if those people
7 over at Crystal River wanted to file a challenge
8 they would have standing, they would be within ten
9 miles.

10 MR. O'NEILL: Your Honor, I could come
11 up with a million different what ifs, but I am
12 looking at a very pithy contention that was fairly
13 vague to begin with that focuses on a PRA which they
14 said didn't exist, and SAMAs, and we are pointing
15 out the fallacies of their statement, and we are
16 pointing out that this is not an admissible
17 contention. And my statements were clearly in the
18 context of what I had to work with, which is not a
19 contention that we want to deal with.

20 I think it is fair to say that, you
21 know, from the analysis done at co-located plants
22 that this is not an issue. And that was almost any
23 way you look at it.

24 ADMIN. JUDGE MURPHY: I have a brief
25 clarification question.

1 MR. O'NEILL: Sure.

2 ADMIN. JUDGE MURPHY: Judge Karlin just
3 referred to the Crystal River plant as being a
4 totally independent plant. But isn't it true that
5 the blow down water from the Levy plant would make
6 use of the facilities at Crystal River for their
7 ultimate discharge?

8 MR. O'NEILL: There is a -- this
9 discharge, which will come in a pipe down from Levy,
10 will actually then hit the discharge sleuce from
11 Crystal River and go into the Gulf of Mexico. So
12 make use of, to the extent that it is a way of
13 utilizing existing discharge path, yes. But it is
14 just going to flow into the Gulf, so it's not like
15 there's anything mechanical or anything that has to
16 be operational. That's for sure. Other than that,
17 no.

18 ADMIN. JUDGE MURPHY: Other than the
19 commercial or business aspects of the relationships
20 between them, are there any other connections
21 between the power grid or other things?

22 MR. O'NEILL: Oh, certainly there will
23 be connect -- eventually the transmission will meet
24 someplace. I mean they'll back up, if you will, to
25 a certain extent it ensures reliability --

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1 THE CLERK: Time.

2 MR. O'NEILL: -- power to both units.

3 ADMIN. JUDGE MURPHY: Okay. I have one
4 other brief point, which really I had wrote in
5 Contention 1, so maybe it's a segue into tomorrow
6 morning's discussion.

7 But it relates because the subject of
8 the ripeness of this arose. And in your document on
9 page 17 in reference to Contention 1 you say that:
10 "Progress will amend the Application to reference
11 Revision 17." And then you go on to say: "If
12 progress were to revise its Application in response
13 to the NRC's Staff's review of AP1000 DCD Revision
14 16 or 17, then the Petitioners could submit
15 contentions at that time."

16 So I was a little confused. First of
17 all you say you will make a revision, but subsequent
18 contentions would be permitted then only if NRC
19 staff demands a review. Is that what that's meant
20 to imply? Was I clear?

21 MR. O'NEILL: I was with you until that
22 last statement, Judge.

23 ADMIN. JUDGE MURPHY: You state that you
24 will amend the application to reference Revision 17.
25 And then you say, if you were to revise the

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1 application in response to NRC Staff's review, it's
2 not whether or not you will. You say you will
3 revise it, but now if you revise it in response to
4 NRC's Staff's review then Petitioners could submit
5 contentions.

6 Is there a distinction between whether
7 or not --

8 CHAIRMAN KARLIN: Which page is that?

9 ADMIN. JUDGE MURPHY: That's page 17 of
10 the Progress.

11 CHAIRMAN KARLIN: Of Contention Number
12 1?

13 ADMIN. JUDGE MURPHY: Yes. In
14 Contention 1.

15 MR. O'NEILL: Okay. I think I
16 understand your question, Judge. In fact we are
17 just going through the amendment of Harris COL same
18 company application for taking into account certain
19 of the changes that are now in Rev. 17.

20 As you know, the Commission has
21 encouraged standardization, while the change in Rev.
22 17 generally -- they will not -- we'll talk about
23 this tomorrow, I guess -- going to affect SAMAs at
24 all, which is the subject here.

25 ADMIN. JUDGE MURPHY: Yes.

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1 MR. O'NEILL: There are other things
2 that all the AP1000 applicants will do so that there
3 will be standardization in many different aspects of
4 this design. That is deemed to be a good thing.
5 It's being encouraged by the Commission.

6 So, to the extent that there are
7 changes, improvements, there will be an amendment to
8 the COL, the COLA.

9 If there's something there that is
10 deemed to be new information that causes a
11 petitioner to be concerned about the application,
12 now that there's this new information, as Chairman
13 Karlin pointed out, there is an opportunity for an
14 untimely contention. You know, we've used late file
15 for 30 some years, Chairman Karlin. I don't know if
16 I can change.

17 CHAIRMAN KARLIN: If it's not in the
18 Regs. it doesn't exist.

19 MR. O'NEILL: But untimely. And you
20 have to make the showing. But that can certainly be
21 good cause if there is something new and different.

22 CHAIRMAN KARLIN: We'll get into that
23 tomorrow probably. But I did have one question.
24 I'm sorry.

25 MR. O'NEILL: Sure.

1 CHAIRMAN KARLIN: Does the Levy
2 application or ER, it all even mention the fact that
3 there's a Crystal River Energy Complex, Nuclear
4 Power Plant 9.6 miles away?

5 MR. O'NEILL: Sure.

6 CHAIRMAN KARLIN: Where?

7 MR. O'NEILL: Now --

8 CHAIRMAN KARLIN: I mean there's an
9 initial -- no, I don't mean -- there's an initial
10 discussion usually, the site characteristics. It's
11 early in the -- and is that where it is?

12 MR. O'NEILL: The answer is, emergency
13 planning, for example.

14 CHAIRMAN KARLIN: Okay.

15 MR. O'NEILL: There is going to be
16 coordinated emergency planning. There is going to
17 be coordinated facilities that could be used in the
18 event of emergency.

19 CHAIRMAN KARLIN: I mean you're not
20 trying to hide the ball --

21 MR. O'NEILL: No, no.

22 CHAIRMAN KARLIN: -- from everybody and
23 pretend that it doesn't exist. I mean because
24 people around here already know that.

25 MR. O'NEILL: But, I mean, the fact is,

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1 yes, in areas where there is some reason to mention
2 it.

3 CHAIRMAN KARLIN: Okay.

4 MR. O'NEILL: I mean there's a lot of
5 benefits that you claim for. You have staff that's
6 located that can work together on various aspects.
7 I mean there's a lot of benefit from having it here.

8 But the problem, of course, was having
9 all your eggs in one basket at one site, was not
10 deemed to be prudent. That's why it's not going to
11 be on the exact same site.

12 ADMIN. JUDGE BARATTA: Then the
13 statement that they make then, an accident at the
14 nuclear unit, CREC, could disrupt normal operation
15 of the Levy County Units 1 and 2 is true, because
16 you are going to use facilities here to assist
17 there.

18 MR. O'NEILL: If I remember correctly
19 it's one of the emergency communication centers,
20 will be the same. So I guess if you had two
21 accidents then there might be some disruption.

22 ADMIN. JUDGE BARATTA: No. I'm not
23 saying there's two accidents. I'm saying there's an
24 accident at Crystal River.

25 MR. O'NEILL: And that facility will be

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1 --

2 ADMIN. JUDGE BARATTA: So what you're
3 telling me is they're shared resources.

4 MR. O'NEILL: The shared resources, a
5 use of a facility, communication facility in the
6 event of an accident. But I'm not sure that really
7 is the point.

8 I know you're picking on my sentence,
9 and, you know, I think the sentence was fair. But,
10 yes, I will -- and it was focused on the Contention
11 that we were focusing on. But, yes, you are
12 correct, Judge Baratta, that you can come up with
13 some way that business as usual if there was a true
14 accident at another plant could be affected in some
15 way. But in the context of that statement had to do
16 with the safe operation of Levy, and I think it's
17 fair to say. And if I rewrote it, I would qualify
18 it.

19 CHAIRMAN KARLIN: I think we've given
20 you a little extra time. Thank you, Mr. O'Neill.

21 I guess it's Staff. Okay.

22 MS. KIRKWOOD: Your Honor, Sara Kirkwood
23 for the NRC Staff.

24 CHAIRMAN KARLIN: All right.

25 MS. KIRKWOOD: Once again we believe

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1 that our pleading was -- we stand by our pleadings,
2 but we are happy to answer any questions on this
3 contention that the Board may have.

4 CHAIRMAN KARLIN: Okay. I don't think
5 too many, but I have a couple. Let's go to your
6 brief, page, what is it, 55. Because this dealt
7 with the question I was asking Ms. Olson. I think
8 we got clarification, it seems to me.

9 Your second sentence: "A severe
10 accident at CREC is outside the scope of the
11 proposed federal action." Now, they do -- then the
12 next sentence: "The granting of a COL to Progress
13 Energy for the Levy site could not cause a severe
14 accident at CREC." And then, "Thus, the federal
15 action would not be the proximate cause of a severe
16 accident at CREC and the consideration of a severe
17 accident at CREC in the MAMA is not an admissible
18 contention."

19 Now, it seems to me that's not what
20 they're saying. They're not saying a problem at
21 this site, Levy, could cause an accident at CREC.
22 They're saying an accident at Crystal River Energy
23 Complex could cause or contribute to a severe
24 accident at Levy. And so I think you've gone off on
25 the wrong foot there, and that's not what I hear

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1 them saying. I mean, I admitted they didn't have a
2 long discussion of this subject, but they're not
3 saying, you know, the granting of a COL to Progress
4 for Levy could cause a severe accident at CREC.
5 They're saying kind of the opposite, a problem at
6 CREC could cause -- that the severe accident
7 analysis for Levy needs to consider whether or not
8 something that happened at CREC, Crystal River,
9 could cause a problem at Levy.

10 MS. KIRKWOOD: I guess, Your Honor, I
11 mean I would certainly agree that the Staff wasn't
12 quite sure what was being raised by this Contention.
13 But either way I think the argument is still true
14 that there is nothing here that would suggest that
15 if there was an accident at CREC that that would
16 require additional environmental analysis at the
17 Levy County site. Because an accident at CREC would
18 not be part of the federal action. That is not
19 something that is caused us granting a license to
20 Levy.

21 CHAIRMAN KARLIN: Well, but wait a
22 second. What if you have a nuclear power plant
23 that's located right next to a railroad track that
24 has hazardous materials driving right by it, and the
25 hazardous material railroad car blows up and causes

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1 havoc at the facility.

2 You have guidance, that's staff
3 guidance. Reg. Guide 1.206. And it says, you know,
4 that you have to - applicants should consider all
5 facilities and activities within five miles of the
6 nuclear plant and include facilities and activities
7 at greater distance as appropriate. And the purpose
8 of this section is to establish whether the effects
9 of potential accidents in the vicinity of the site
10 from present and projected industrial transportation
11 and military installations should be used as a
12 design basis event and to talk about other problems.

13 So that talks about other operations in
14 the area that could cause a problem at this proposed
15 site. And isn't that fair game? There's something
16 here, 9.6 miles away, it could cause a problem. You
17 have to consider it. You, the applicant, has to
18 consider it.

19 MS. KIRKWOOD: The reg. I was referring
20 to was, I believe, is discussing Chapter 2 of the
21 FSAR. It was a safety site analysis.

22 CHAIRMAN KARLIN: Yes. I believe that's
23 right.

24 MS. KIRKWOOD: And what we viewed this
25 as raising an environmental contention. And

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1 certainly the Staff considers things in safety space
2 that it would not consider under NEPA as severe
3 accidents.

4 And so, yeah, the Staff is still
5 evaluating what we will consider as site hazards
6 under Chapter 2. And we wouldn't necessarily agree
7 with everything the Applicant said about what needs
8 to be in or out of that analysis.

9 CHAIRMAN KARLIN: Okay.

10 ADMIN. JUDGE BARATTA: I think you raise
11 the point that really is germane to this. SAMA
12 analysis really is intended for the owner of a
13 plant, which in this case is yet to be approved and
14 built, Levy plant, to determine what they need to do
15 if they have a super accident, relative to
16 mitigating the effect of that accident on the
17 population.

18 And is it not true that they look at
19 different alternatives to see which one will be the
20 optimum relative to cost and benefit, and that's
21 really the purpose of SAMA analysis. And therefore,
22 who should be looking at the impact of an accident
23 at Crystal River on Levy is really Crystal River.

24 MS. KIRKWOOD: Yes. I would agree with
25 that.

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1 ADMIN. JUDGE BARATTA: That Levy should
2 be looking at the impact of the severe accident at
3 Levy on Crystal River.

4 MS. KIRKWOOD: That might be. I mean --
5 a severe accident analysis to the extent that they
6 found that there was a severe accident --

7 ADMIN. JUDGE BARATTA: Right.

8 MS. KIRKWOOD: -- that was going to have
9 offsite consequences at Crystal River. I mean
10 there's a lot of --

11 ADMIN. JUDGE BARATTA: Yeah, there's a
12 lot of ifs before that. I understand. But I mean
13 the problem with this contention is that it's asking
14 Levy to look at an event that's occurring at Crystal
15 River, and that's backwards. Because the way SAMA's
16 set up, it's intended to look at events that occur
17 at that plant and its impact on the surroundings.

18 MS. KIRKWOOD: Right. Whether we got to
19 any mitigation would depend on all the ifs.

20 ADMIN. JUDGE BARATTA: Right. All the
21 ifs before that, yeah. Because I wanted to get
22 clarification on that. That's the way it's supposed
23 to work; is that correct?

24 MS. KIRKWOOD: Yeah. That's the way we
25 do it.

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1 ADMIN. JUDGE BARATTA: All right.
2 Because you're right. I think this falls under a
3 different issue, which is like say, FSR Chapter 2 as
4 opposed to a SAMA analysis.

5 CHAIRMAN KARLIN: I'm not sure I agree
6 with all that. But anyway, I think even in SAMA you
7 have to look at what could trigger a SAMA, severe
8 accident. And if something as a railroad car or
9 local gas plant that blows up and that could trigger
10 a SAMA here, and then you have to figure out what
11 you do about it. But we won't resolve that here.
12 Maybe we'll have to research the law a little bit
13 and see.

14 But I think your analysis maybe is not
15 what the Contention is. That's all, my main point
16 or concern.

17 Okay. Any other questions? Anything
18 else?

19 (No response.)

20 CHAIRMAN KARLIN: All right. Thank you,
21 Ms. Kirkwood.

22 What was it, ten minutes?

23 MS. OLSON: I think so.

24 CHAIRMAN KARLIN: I think so. Okay.

25 MS. OLSON: I appreciate very much, Your

1 Honor, that you put in the line that I will repeat
2 because it's the main point I wanted to make.

3 That I believe SAMA does include the
4 issue of the trigger of the severe accident, and
5 that is the concern that is attempted to be
6 reflected in the PIF.

7 CHAIRMAN KARLIN: Well, maybe Judge
8 Baratta's right and the Staff maybe's right, maybe
9 it doesn't matter what causes or triggers the severe
10 accident, but the SAMA has to -- severe accident
11 mitigation analysis says, if you have a severe
12 accident, by whatever cause, you have to have a
13 mitigation analysis that says what you're going to
14 do to mitigate it, whatever it --

15 MS. OLSON: I guess I have to go get
16 involved in license renewal over at CRAC, I guess.
17 We'll see whether I do that.

18 But I did want to clarify that it was
19 just the Babcock Wilcox design over at Crystal River
20 Nuclear Power Station that made me bring in the out
21 of scope reference to Three Mile Island. Because --
22 well, it's in the scope talking about a severe
23 accident. But, you know, we could bring in
24 Chernobyl, the fact that there's a no fly zone over
25 every nuclear power plant. Well, if these are not

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1 hazardous facilities, why is there a no fly zone
2 over every nuclear power plant. You know, I don't
3 want to assert that I think someone's going to crash
4 a plane into Crystal River, but if it happened it
5 was Mohammed El Bradei who said that it would be a
6 Chernobyl scale incident. Anybody who's putting in
7 stuff after that really hasn't done their homework.

8 So I do think that whatever we say or
9 don't say about the consequences of Three Mile
10 Island, there has been an accident that did have
11 immediate and severe radiological consequences that
12 I think, you know, raises that question of, what is
13 the interaction between these two facilities.

14 And in the case of licensing Levy and
15 talking about severe accidents is there an
16 association. And it hasn't been asked. It is not
17 addressed. That's the point.

18 CHAIRMAN KARLIN: Okay. I don't think
19 we have any more questions.

20 Judge Baratta?

21 ADMIN JUDGE BARATTA: No.

22 CHAIRMAN KARLIN: Murphy?

23 ADMIN JUDGE MURPHY: No.

24 CHAIRMAN KARLIN: Okay. Well, I think,
25 unless you have something more you want to say,

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1 we'll probably close for the day and reconvene
2 tomorrow.

3 MS. OLSON: Okay. Sounds good.

4 CHAIRMAN KARLIN: We're going to
5 reconvene at 9:00 a.m. tomorrow.

6 Oh, locking up. As I think I mentioned
7 earlier, the Officer indicated that this room will
8 be locked in the evening. So if you want to leave
9 material here, apparently that would be okay. I'm
10 not going to do it, but if you want to do it, I mean
11 that's a cause for the parties.

12 MS. OLSON: My co-petitioner from the
13 Ecology Party has a question.

14 CHAIRMAN KARLIN: Yes, sir?

15 MR. HECKER: Gary Hecker with the
16 Ecology Party. Unfortunately Ms. Campbell and
17 myself have other obligations for tomorrow. And we
18 were wondering if the Panel or Counsel or Staff,
19 would be offended if we were just ably represented
20 by Ms. Olson and were unable to attend tomorrow.

21 CHAIRMAN KARLIN: No, that's fine. We
22 understand that not everybody can be here every day
23 of this. And so, thank you for coming today, and we
24 recognize you won't be here tomorrow. That's fine.

25 Oh, Mr. O'Neill, question?

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1 MR. O'NEILL: Just a question. Could
2 you tell us what we're doing tomorrow on Contention
3 1, first thing. Is it the same order and number of
4 minutes?

5 CHAIRMAN KARLIN: Yes. We're going to
6 go in Contention Number 1. The plan would be to
7 allocate 45 minutes.

8 MR. O'NEILL: Okay.

9 CHAIRMAN KARLIN: I mean it may not
10 require that. It may, you know, again, the 20, 15,
11 10, and then we'll go to, I guess, Contention 6(a),
12 6(b) and 12. I think that's a group we're going to
13 go to. And those will be, again, as a group, that
14 will be covered in the same 45 minutes. We're not
15 going to break those out into three 45's or some
16 combination. So the groups that we've put together,
17 we thought there was logical connection. And so
18 6(a), 6(b) and 12 will go together, I think it is.
19 And then 7 and 8 go together, and then 9, 10, 11,
20 and 4(o) go together. But we'll start with
21 Contention 1 tomorrow morning.

22 Does that help you there?

23 MR. O'NEILL: I understand.

24 CHAIRMAN KARLIN: Any other questions?
25 Anything from the Staff at this point?

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1 (No response.)

2 CHAIRMAN KARLIN: Question from the
3 court reporter? Everything okay?

4 All right. Then we'll convene crisply
5 at 9:00 a.m. tomorrow morning. Thank you all for
6 your time and attention. We're adjourned.

7 (Whereupon, at 5:45 p.m., proceedings
8 adjourned until Tuesday, April 21, 2009,
9 at 9:00 a.m., in the same location.)

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CERTIFICATE

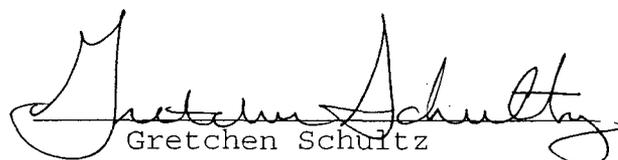
This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: Progress Energy Florida, Inc.

Name of Proceeding: Oral Arguments

Docket Number: 52-029-COL and 52-030-COL;
ASLBP No. 09-879-04-COL-BD01

Location: Bronson, Florida

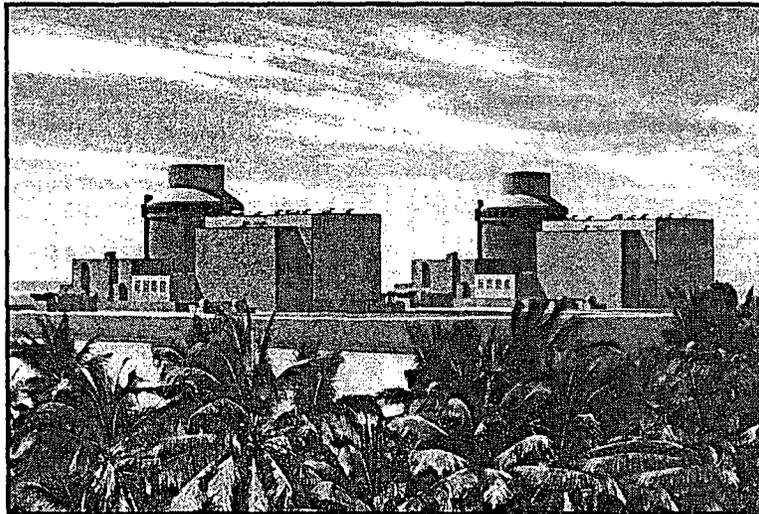
were held as herein appears, and that this is the
original transcript thereof for the file of the United
States Nuclear Regulatory Commission taken by me and,
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transcript is a true and accurate record of the
foregoing proceedings.



Gretchen Schultz
Official Reporter
Neal R. Gross & Co., Inc.

Levy Nuclear Plant Site Overview

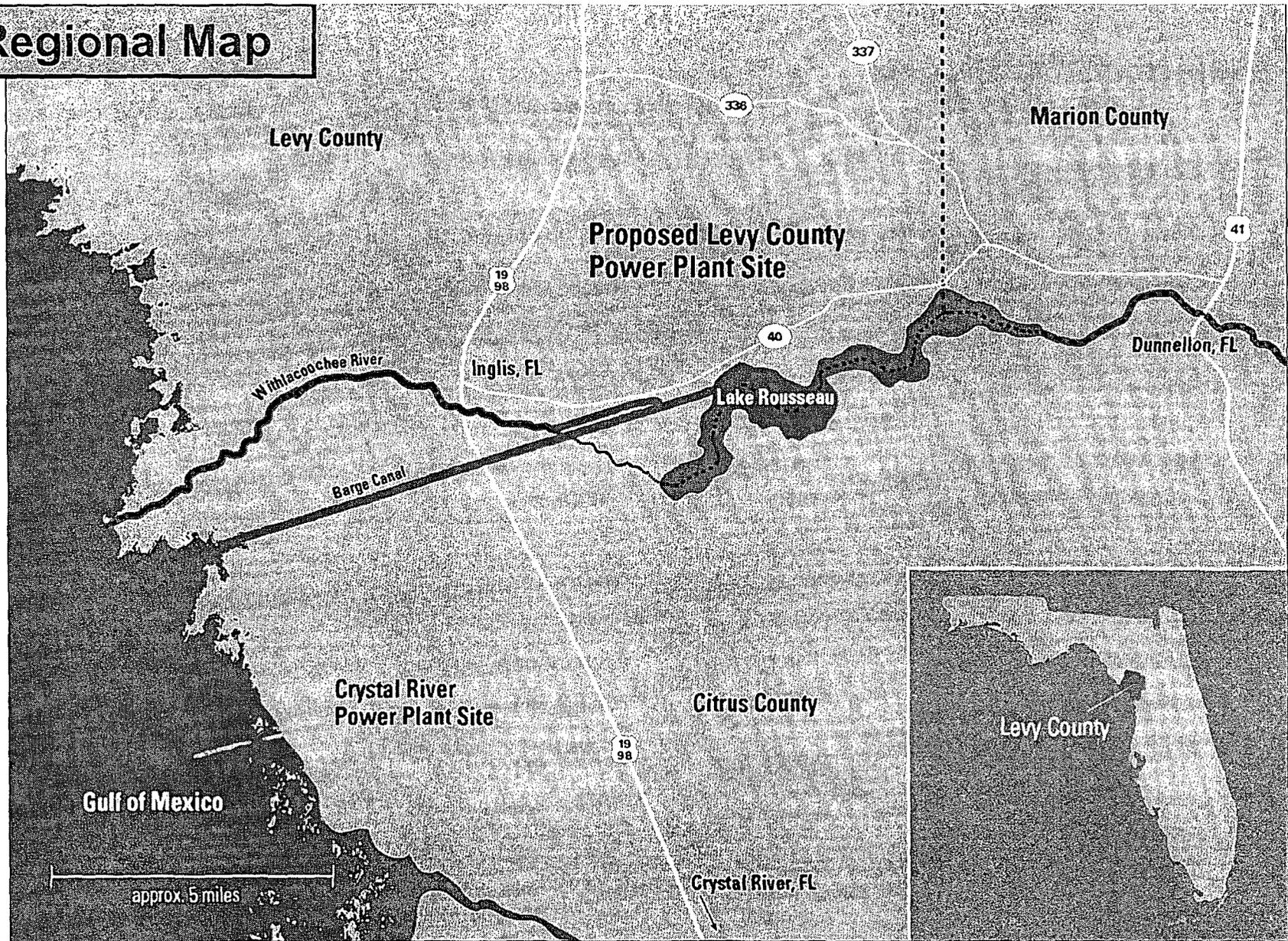
Prehearing Conference Before the Atomic Safety & Licensing Board,



April 20-21, 2009

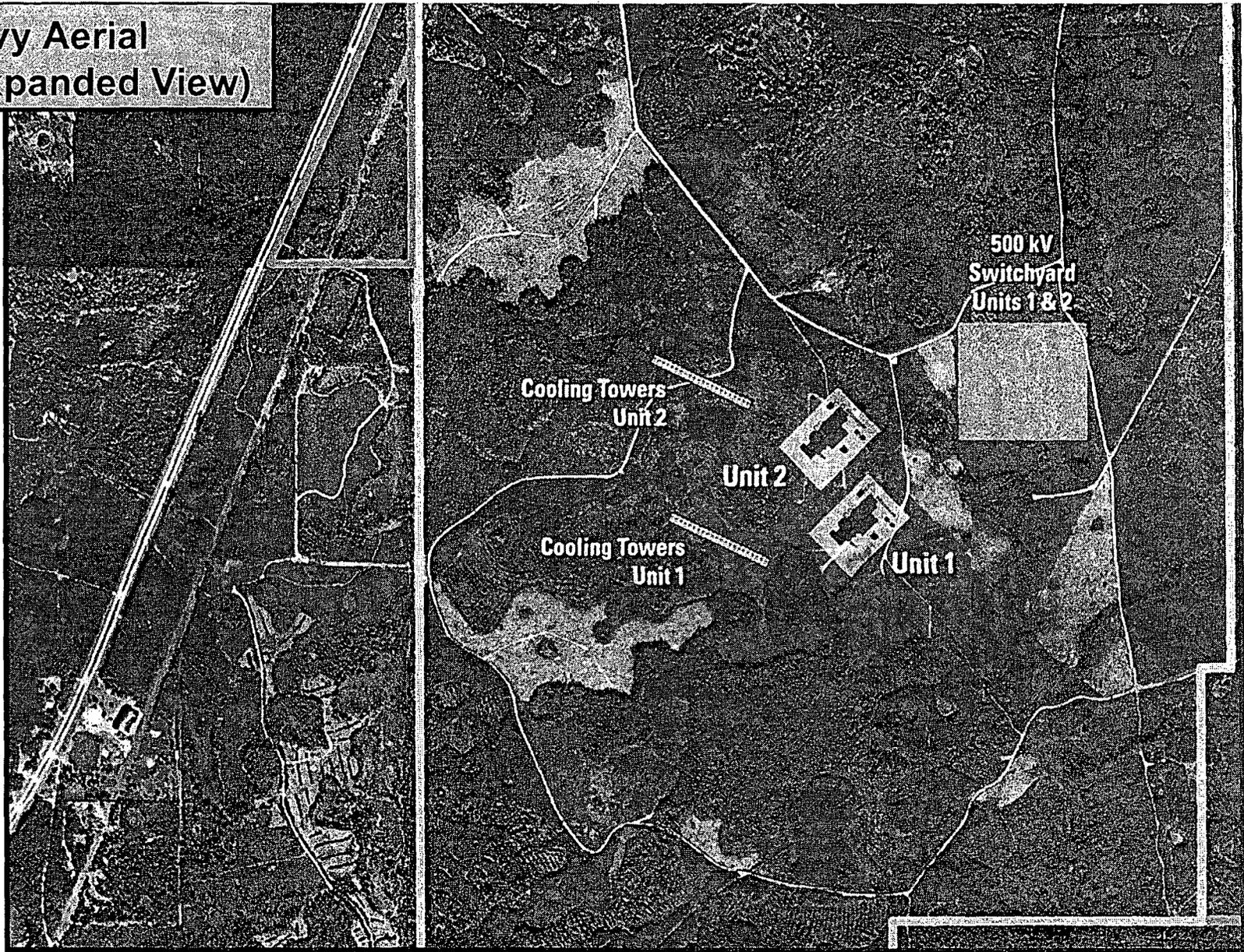


Regional Map



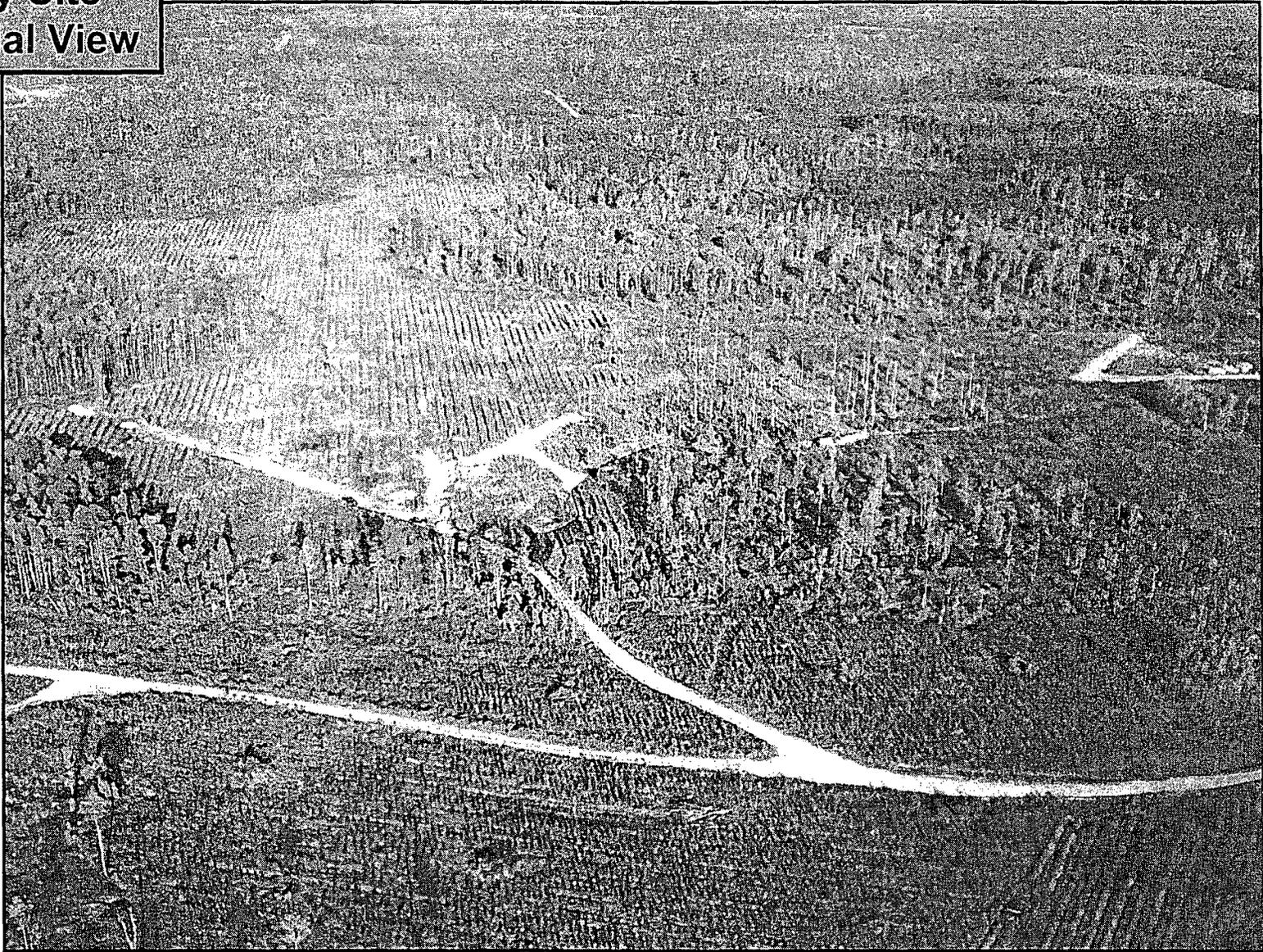
See ML090760469, p.10 of 42

**Levy Aerial
(Expanded View)**



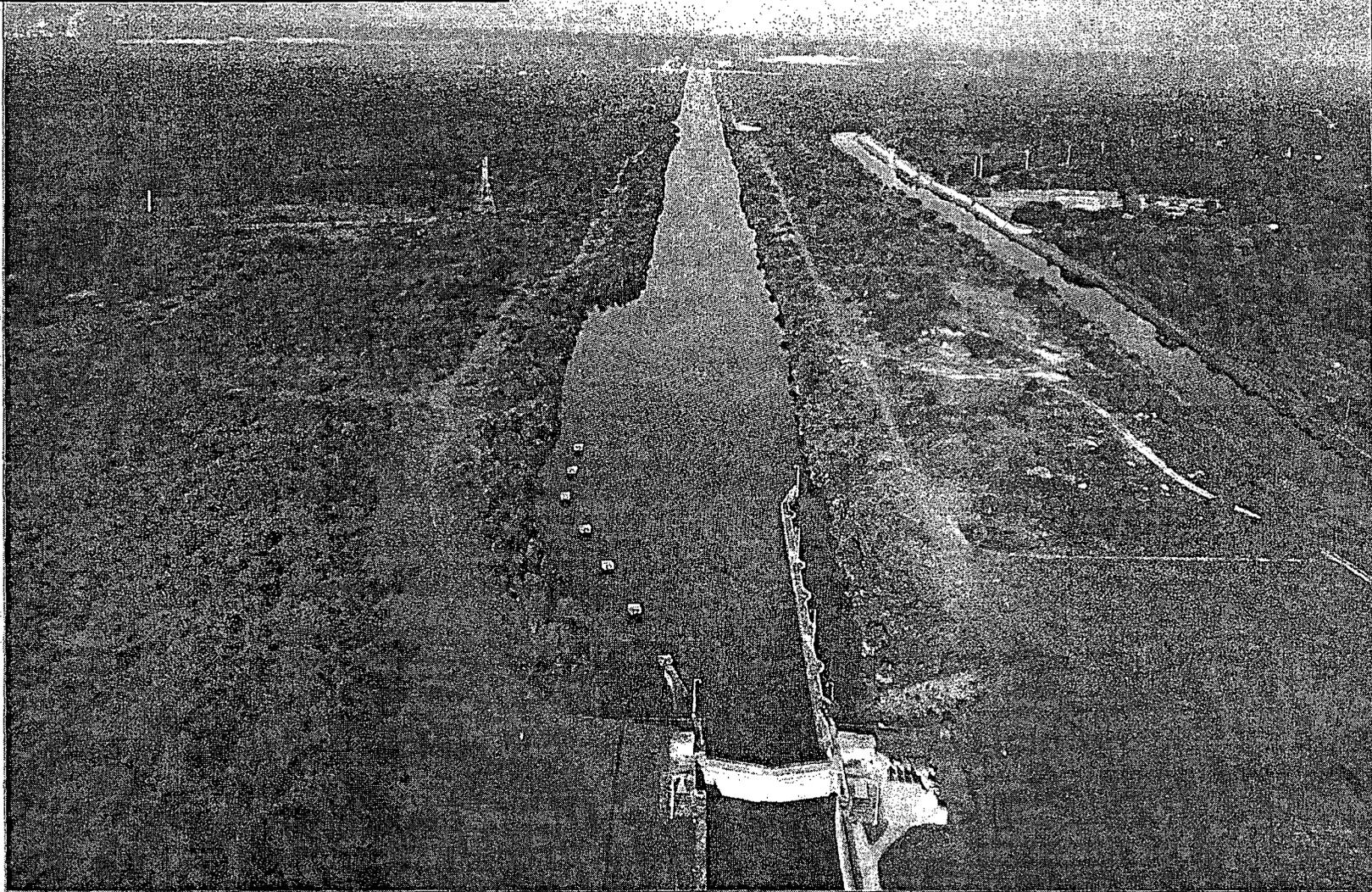
See ML090760469, p.12 of 42

Levy Site
Aerial View



See ML090760469, p.13 of 42

**Cross-Florida Barge Canal
Looking West Toward Gulf**



See ML090760469, p.20 of 42

Levy Foundation Concept

