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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
In the Matter of
TENNESSEE VALLEY AUTHORITY
Bellefonte Nuclear Power Plant - Units 1 and 2
Docket No. 50-438-CP and 50-439-CP
March 1, 2010
9:00 a.m. EST
TRANSCRIPT OF PROCEEDINGS
Pre-Hearing Conference
Before the U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Judge G. Paul Bollwerk, III, Chairman
Judge Anthony J. Baratta
Judge William W. Sager

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APPEARANCES

For Joint Petitioners:
James B. Dougherty Esq.
Louis A. Zeller, Esq.

For the TVA:
Edward J. Vigluicci, Esq.
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For the NRC staff: Andrea Z. Jones

David E. Roth
Christine Jochim Boote

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P R O C E E D I N G S

>> JUDGE BOLLWERK: Can we go on the record please. Good morning everyone. We're here this morning to hold an initial prehearing conference with respect to the reinstatement of construction permits issued under part 50 with respect to the Bellefonte proceeding. And I believe -- Mr. Dougherty?

>> (Petitioners arrive)

MR. DOUGHERTY: Yes, sir.

>> JUDGE BOLLWERK: We will give you a second. Obviously, you've got an issue.

>> MR, DOUGHERTY: It looks worse than it is.

>> JUDGE BOLLWERK: I'm glad to hear that sir. Take your time.

Good morning. Today we are here to conduct an initial prehearing conference in a proceeding regarding the reinstatement of construction permits issued under Part 50 of Title 10 of the Code of Federal Regulations also referred to as the C.F.R.

This prehearing conference has been convened as a result of the response of several groups including the Blue Ridge environmental defense league and efficiency and sustainability chapter and the southern alliance for clean energy to a notice of opportunity on March 13, 2009.

1 By joint submission dated May 8th, 2009,
2 these petitioners requested an adjudicatory hearing on
3 the August 26, 2008 request of the Tennessee Valley
4 Authority for TVA for reinstatement of the permits
5 issued in 1974 that authorized TVA to construct water
6 reactors on its Bellefonte nuclear facility site located
7 some 6-miles northeast of Scottsboro, Alabama.

8 It was necessary because after deferring
9 completion of units 1 and 2 in 1998, with the units
10 88 percent and 59 percent finished respectively, in
11 2006, TVA requested and NRC granted a withdraw of the
12 CP portion, 1 and 2.

13 Joint petitioners May 2009 hearing request
14 regarding the TVA CPA reinstatement matter first came
15 before this Board in January, 2010.

16 Prior to that time, it was under consideration
17 by the Commission in connection with the admissibility
18 of the first two of their contentions challenging the
19 TVA reinstatement request both which involved issues
20 whether the agency had the authority to grant such a CP
21 reinstatement request.

22 In January, 7th, 2010 ruling, CLI-10-6, a
23 majority of Commission ruled that such authority did 4
24 exist and sent the case to the Atomic Safety Licensing
25 Board panel for further proceedings, considering ruling

1 upon the questions of joint petitioner standing and the
2 admissibility of their other 7 contentions.

3 Subsequently on January 15, 2010, the
4 licensing Board panel, chief administrative judge issued
5 a notice designating this 3 member licensing Board to
6 conduct the proceeding.

7 By way of background, regarding the NRC
8 licensing process, as it applies to this proceeding, the
9 recent disclosure regarding nuclear power plant
10 licensing has concerned the combined license or COL
11 process under Part 52 of the agency's regulations.

12 If issued, a COL provides authorization from
13 the NRC both to construct and with conditions operate
14 nuclear power plant at a specific site in accordance
15 with agency regulations.

16 Such a licensing process is in fact ongoing in
17 connection with Bellefonte units 3 and 4. Two AP1000
18 facilities, the TVA has proposed constructing and
19 operating on the same site as Bellefonte 1 and ,2., the
20 subject of this proceeding.

21 The COL process can be contrasted with the
22 licensing process that potentially would be applicable
23 to Bellefonte Unit, 1 and 2 which would be the process
24 used for the licensing of nuclear power plants currently
25 operating in the United States.

1 Pursuant to Part 50 AT regulations,
2 applicants for those facilities were required to apply
3 for and obtain separate authorization to construct and
4 then, to operate a reactor.

5 Thus, in the case of Bellefonte, 1 and 2, if
6 the TVA obtains reinstating construction permits, TVA
7 would be required to procure a separate operating
8 license for each facility.

9 As would be the case under one step Part 52,
10 providing license redeem or prior to the agency issuing
11 a Part 50 operating license, in connection with the
12 request to reinstate the Part 50 construction permits
13 for Bellefonte Units, 1 and 2, the NRC staff which is
14 one of the participants before us today had the
15 responsibility of completing safety and environmental
16 reviews of he TVA request in accordance with among other
17 applicable provisions of the Atomic Energy Act, NRC,
18 regulations, the National Environmental Policy Act or
19 and NEPA.

20 At the same, The Atomic Energy Act
21 regulations, provided an opportunity for interested
22 stakeholders including interested members of the public,
23 other organizations and Governmental entities including
24 governmental bodies and native American tribes to seek a
25 hearing regarding a TVA reinstatement request in which

1 they could contest that request.

2 And with respect to the conduct of the
3 adjudicatory process, as independent administrative
4 judge appointed by the Commission to serve as a member
5 of the Atomic Safety Licensing Board, this three member
6 member licensing Board has been designated to preside
7 over matters raised in the hearing protest.

8 The panel's administrative judges do not work
9 for or with the NRC staff relative to the staff's
10 licensing application review.

11 Rather, we are charged with deciding whether
12 the issues proffered by those requesting a hearing such
13 as joint petitioners are admissible and for those issues
14 we find validity making a determination regarding their
15 subsequent validity in terms of the grant, conditioning
16 or denial of the requested licensing authorization.

17 Our decisions on hearing matters are subject
18 to review first by the Commission as the agency Supreme
19 Court and then, by the federal Courts including the
20 inappropriateness of the Supreme Court of the United
21 States.

22 Relative to the specific matters before us
23 today in this initial prehearing conference, we will 7
24 hear participant's oral arguments first on the matter of
25 the application of the good cause standard of Atomic

1 Energy, section 125(a) in determining whether the TVA
2 reinstatement request can be granted.

3 Then, for the balance of today's prehearing
4 conference, the participants will have an opportunity to
5 make oral presentations on the question, whether the
6 remaining seven contentions posited by joint petitioners
7 and contesting the advocacy of certain aspects of the
8 TVA CP reinstatement request and the staff's review of
9 that request are legally sufficient to be admitted as
10 legal issues in this proceeding.

11 Before we begin hearing the petitioners
12 presentations on these matters, I would like to
13 introduce the Board members.

14 To my right is associate chief administrative
15 judge, technical, Anthony Baratta. Dr. Baratta is a
16 nuclear engineer and a full-time member of the Atomic
17 Licensing Board Panel.

18 Participating via video conference today is
19 Dr. William Sager.

20 Judge Safer, an oceanographer geo-scientist is
21 a part-time member of the panel.

22 My name is Paul Bollwerk and I'm an attorney
23 and chairman of the licensing board. 8

24 At this point, I would like to have counsel
25 for the various participants, identify themselves for

1 the record. Start with the joint petitioners, then move
2 to TVA and finally to the NRC staff. Mr. Dougherty, if
3 you would, please.

4 >> MR. DOUGHERTY: Good morning, Your Honor
5 James B. Dougherty for the petitioners.

6 >> JUDGE BOLLWERK: Would you like to
7 introduce the gentleman at the table?

8 >> MR. DOUGHERTY: Oh, yes sir. At my right is
9 Louis Zeller, executive director of my client, Blue
10 Ridge Environmental Defense League.

11 >> JUDGE BOLLWERK: Good morning.

12 >> MS. SUTTON: Good morning. My name is
13 Kathryn Sutton. I'm a partner in the law firm of
14 Morgan, Lewis & Bockus. I'm here today representing the
15 Tennessee Valley Authority and I will allow the
16 gentlemen to introduce themselves.

17 >> MR. CHANDLER: My name is Lawrence Chandler
18 with the firm of Morgan Lewis & Bockius and also here on
19 behalf of Tennessee Valley Authority.

20 >> MR. VIGLUICCI: My name is Edward
21 Vigluicci. I'm with the Tennessee Valley Authority, the
22 Office of the General Counsel.

23 >> JUDGE BOLLWERK: All right, thank you. 9
24 NRC staff please?

25 >> MS. JONES: Andrea Jones for the NRC staff.

1 >> MS. BOOTE: Good morning, Christian Boote
2 for the NRC staff.

3 >>> MR. ROTH: David Roth, NRC staff.

4 >> JUDGE BOLLWERK: Thank you. All right.
5 Let's wait one second. We will do that.

6 As my previous comments indicated, during
7 today's conference, we will be entertaining
8 presentations regarding from participants the good cause
9 and contention matters outlined previously.

10 At some point in the future, if any
11 contentions are admitted in accordance with Title 10 of
12 the code of Federal regulations, the Board will issue a
13 hearing notice that among other things may indicate that
14 members of the public will be afforded an opportunity to
15 provide as appropriate oral limited appearance
16 statements setting forth their views concerning he
17 reinstatement for Bellefonte Units, 1 and 2.

18 In that issuance or subsequent notice, the
19 Board will outline the times, places and conditions of
20 participation relative to any opportunity for oral
21 limited appearance statements.

22 In the interim, as the Board noted in its
23 February 18, 2010 issuance in this case, any member ~~of~~
24 submit a appearance statement regarding his or her views
25 regarding issues in the proceeding.

1 Those written statements may be sent in a time
2 by regular mail to the Office of the Secretary, U.S.
3 Regulatory Commission, Washington DC, zip code,
4 20555-0001, attention, to the rulemakings and
5 adjudication staff.

6 Or by e-mail to hearing docket, that's all one
7 word, at NRC.G OV.

8 A copy of the statement also should be
9 provided to me as the chairman of this atomic safety
10 licensing Board by sending regular mail to my attention
11 as the Atomic Safety and Licensing board Panel, mail
12 stop T-3F23 U.S. Nuclear Regulatory Commission,
13 Washington DC same zip code, 2055-0001, or by e-mail to
14 Paul.Bollwerk -- B as in boy O-L-L-W-E-R-K-- at NRC.gov.

15 And again, this submission information is
16 provided in the Board's February 18 2010 issuance that
17 is available under the reactors, material and other
18 hearings portion of the agency's electronic hearing
19 docket which can be found under the hearings and
20 licensing portion of the electronic reading room tab on
21 the agency's home page which is at www.nrc.gov.

22 With these limited appearance statement are an
23 opportunity for those that do not wish to seek party 11
24 status, provide their views regarding the substantive
25 issues before the Board, While these limited

1 appearance statements provide an opportunity to provide
2 these regarding matters before the Board, the licensing
3 Board panel would also be interested in hearing from
4 anyone who might be watching this proceeding via web
5 streaming about their experience with accessing and
6 viewing the webcast.

7 To the extent that anyone viewing this
8 proceeding via the internet has comments regarding the
9 technical aspects of the webcast or its efficacy as a
10 tool providing for broader public access to the
11 adjudicatory hearing process regardless of the actual
12 hearing location, those comments can be directed by
13 e-mail to webstreammaster, that's all one word,
14 webstreammaster.resource@NRC.gov.

15 This address is also on the bottom of the web
16 page that provides access to today's web stream session.

17 I would note also that in addition to the
18 availability of this proceeding via web for live
19 viewing, a verbatim transcript will be available for
20 viewing and download within seven days in the electric
21 hearing docket on the NRC website.

22 Additionally, video of this session will be
23 archived for 90 days under the same webstreaming link¹²
24 affording live access to today's session.

25 Returning to the matter before the Board

1 today, with respect to the order of presentation by the
2 participants of this prehearing conference, in our
3 February 18 order, the outline is scheduled to afford an
4 opportunity with the participants to address various
5 contested matters now before the Board.

6 We would intend to follow that schedule as
7 closely as possible for argument.

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

14 For the end of that closing argument time, the
15 Board will be providing counsel or representatives with
16 notice of the need to finish his presentation.

17 Also, as we noted in our February 18 issuance
18 making their argument, petitioners should bear in mind,
19 we have read their pleadings and they should focus their
20 attention on the critical points of controversy as a
21 result of the various filings.

22 Finally, at some juncture, we would like have
23 a brief discussion regarding some of the administrative
24 details involved in these proceedings. And relative to
25 administrative matters I would note this is my cell

1 phone.

2 I have now turned it off, sticking it in my
3 pocket and not turn it on until recess.

4 I would request that every one else do the
5 same thing or put it on vibrant.

6 But if you do put your phone on vibrant and it
7 goes off during the session, I would ask that you leave
8 the room and have your conversation.

9 We appreciate everyone abiding by this
10 protocol at any time this prehearing conference is in
11 session.

12 If participants have anything at this point,
13 they need to bring to the Board's attention, let's begin
14 with the joint petitioners presentation regarding issue
15 of the application of the Good Cause Standard and Atomic
16 Energy Section 185 (a). And let me find out first how
17 you would like to allocate the ten minutes you've been
18 afforded in terms of the initial argument and rebuttal.

19 >> MR. DOUGHERTY: Yes, thank you.

20 I would like to take seven minutes of the
21 initial ten minutes we've been allocated in my opening
22 statement and reserve three minutes for rebuttal.

23 >> JUDGE BOLLWERK: All right, let me just 14
24 find out from the staff and applicant how they are going
25 to divide their time.

1 MS. SUTTON: We will divide it evenly, Your
2 Honor, five minutes each.

3 >> JUDGE BOLLWERK: Before you start, one
4 point that is important, in CLI-10-6 after indicating at
5 page ten of the slip opinion that relative to TVA CP
6 reinstatement request, section 185 of the Atomic Energy
7 Act was the only arguably, relevant ADA provision, that
8 at page 19 of the slip opinion, the Commission stated,
9 once the licensing Board is convened, it will have to
10 decide in the first instance whether petitioners have
11 established standing and have raised admissible issues
12 and if so, given their claim whether reinstatement on
13 the particular facts presented here is lawful and
14 proper.

15 That is, whether there is good cause for
16 reinstatement. That is sort of the background obviously
17 to what the Commission said on this subject.

18 I know there was some statements in some of
19 the filings that were from the applicant and staff
20 relative to your reply brief indicating that you were
21 trying to somehow contest that Commission statement.
22 And obviously, this Board cannot change what the
23 Commission has said. 15

24 So in making your good cause argument, I would
25 like you to do it with that background and against that

1 background.

2 MR. DOUGHERTY: First, I would like to say
3 that I'm new to this proceedings of course and
4 therefore, somewhat unfamiliar with the file. And
5 actually it's been 25 years since I've been involved in
6 a NRC proceeding in any capacity so the laws and rules
7 have changed so much, for that and medical reasons, I
8 gave a brief consideration to seeking postponement but
9 decided not to inconvenience all these people and
10 instead to make a disclaimer that if I say anything that
11 is unusually boneheaded I will the right later to
12 disavow the statement.

13 >> JUDGE BOLLWERK: All right, appreciate your
14 candor.

15 >> MR. DOUGHERTY: I certainly don't think it
16 is our role to contest anything he Commission has said .
17 I do think it must be said that the Good Cause Standard
18 that's been laid out by the Commission is unclear.

19 The two word phrase finds no grounding
20 anywhere in the statute that section 185 is arguably
21 relevant but only at most, arguably relevant. And if
22 you look for the language to appear anywhere else in the
23 statute, you won't find it, that's true but 185 the Good
24 Cause Standard is raised chiefly regarding situations
25 where CP has expired and the applicant sought

1 reinstatement. We don't think that fits this
2 circumstance even closer.

3 In fact, as most attorneys will note, the
4 basic concept of good cause standard is typically
5 applied in situations where a party has violated some
6 requirement, either entered on time or having a late
7 file contention or even in the statute and regulations
8 where a CP holder has failed to construct a plant on
9 time, then, go to the tribunal hat in hand and say, here
10 is the good cause why we couldn't do what we were
11 supposed to do.

12 But if you apply that framework to here, it
13 does not apply and petitioners are contending that TVA
14 was guilty of any bad conduct or violated any
15 requirement or deadlines simply surrendered their
16 permit, walked away from the plant and now comes back.

17 The idea of trying to fit this in a good cause
18 is very confusing and odd. Both staff and TVA have
19 pointed to the Commission decision in the Washington
20 power case cited in Seabrook and Comanche Peak in which
21 they laid out this two point test in the content of
22 extending construction permits. But on the face, the
23 two part test does not apply here. 17

24 Part one of that two part test is whether
25 there is traceability between the missing of the

1 deadline and the a company's behavior.

2 That does not seem to apply here. And
3 secondly, the second part of that test requires a
4 showing of dilatory conduct and no allegation in here
5 that anything was dilatory.

6 So attempting to cram all this into that
7 standard is not going to help the panel or any of the
8 parties.

9 We think that reinstating construction permit
10 is essentially the same thing as issuing a construction
11 permit especially under these circumstances where the
12 applicant has walked away from the plant. You have
13 evidence on the record that not only the plate turned
14 out but millions of dollars of equipment was
15 cannibalized essentially, removed, sold or
16 redistributed.

17 So when we get to our quality assurance, where
18 the operating plant comes back some number of years
19 later, what your'e really doing is issuing a CP in the
20 first instance. We think that that should be the
21 standard that applies here. The common defense of
22 security and consistent with the health and safety of
23 the public. 18

24 That makes that clear when you look at the
25 rules regarding contentions.

1 2.309 says petitioner contentions must -- I
2 need to read this one more second -- the contention must
3 be material to the findings that the NRC must make.

4 But again we don't know what findings those
5 are.

6 Good cause is just too vague to attach them to
7 and the environmental section of 2.309 says that
8 petitioner shall may environmental contentions relative
9 to the applicant environmental report and then,
10 subsequently, any environmental documentation generated
11 with the NRC.

12 But we don't have any of that. There is no
13 environmental report.

14 And so we are sort of -- in fact, what they
15 say is that contentions should reference the application
16 but in this case, there is no application.

17 All we got was a letter about a year and three
18 quarters ago from the TVA to the staff saying we would
19 like our CP to be reinstated.

20 We don't really know what we're aiming at and
21 what the Board is going to do evidently is try to
22 determine what good cause means and also going to be
23 assessing the merit of our contention. And that's is¹⁹
24 very different kind of situation than what normally
25 applies which we know what standards we need to meet and

1 we can say our contention meet that standard but, this
2 standard has yet to be set. So I hate when lawyers
3 throw around due process casually, but, we now to this
4 point, to justify our contention on the basis of good
5 cause standing.

6 That concludes my opening statement.

7 >> JUDGE BOLLWERK: I think the applicant
8 clearly indicated their view of good cause is that they
9 have given several reasons that they believe testify to
10 the reinstate of and those are the reasons we have to
11 focus on.

12 We need a specific standard obviously with
13 respect to the specific contentions.

14 >> MR. DOUGHERTY: They focus on the standard
15 laid out in the Washington public power case and said
16 for example, that the delay was not dilatory, they had a
17 valid business purpose for doing this. That made a lot
18 of sense in the context of that case which is where you
19 are trying to extend the construction permit.

20 But in this case, it is not an extension. It
21 is just something coming back to the Commission. We
22 think litigating the question of whether that is a valid
23 business purpose is nothing to inform this panel or the
24 Commission as to whether these permits should be
25 reinstated. It just doesn't fit.

1 >> JUDGE BOLLWERK: All right. Judge Baratta,
2 any questions?

3 >> Judge Baratta not at this time.

4 >> JUDGE BOLLWERK: Judge Sager?

5 >> JUDGE SAGER: No, not at this time.

6 >> JUDGE BOLLWERK: All right, thank you.

7 Turn to TVA , take it.

8 >> MS. SUTTON: Yes, Your Honor. At the heart
9 of petitioner's claims here and Mr. Dougherty's opening
10 statement seems to be the claim that CP reinstatement is
11 the same as CP issuance and that's plainly wrong.

12 The petitioners' understanding of this case is
13 why from the outset of their argument. And therefore, I
14 think in order to fully discuss the good cause standard,
15 we really need to be dealing with some background.

16 On that front August, 28 letter to the NRC,
17 TVA asked the agency to reinstate the construction
18 permits referred to as the CPs for Bellefonte Units 1
19 and 2.

20 As you are aware, TVA voluntarily surrendered
21 in 2006. TVA requested reinstatement of the CP in order
22 to return the units to deferred status and determine
23 whether completion of construction and operation of ~~the~~
24 units is a viable option.

25 In the August, 26th letter for example, TVA

1 fully explained including the business purpose, Judge
2 Bollwerk that you just mentioned, the positive change in
3 power generation, economics since 2005, generation
4 alternatives since 2005, possible constraints on the
5 availability of the supply of components necessary for
6 new plant construction. Or And finally, the recognition
7 that many major units, 1 and 2 system structures and
8 components are near completion and this includes for
9 example, the containment building and cooling towers.

10 In response to this TVA request, the NRC staff
11 determined that the good cause standard which is set
12 forth in the Commission's Comanche Peak decision wasn't
13 in fact the appropriate standard to determine whether
14 reinstatement was warranted.

15 Now, Comanche Peak is the applicable present
16 here because like the facts underlying Bellefonte Unit 1
17 and 2, the facts that issue Comanche Peak involved
18 reinstatement of a CP. Again, petitioners ignore this
19 fact and do not recognize the Comanche Peak decision is
20 relevant here.

21 Applying the good cause standard therefore,
22 staff recommend that the Commission recognize to
23 reinstate 1 and the PC and on February, 2009, the staff
24 AUTHORIZE and placed the Bellefonte units into terminate
25 I had status.

1 Inherent in the Commission's determination in
2 this CLI-06 decision is the conclusion that to exercise
3 the authority to reinstate a CP under Section 185, it
4 must find a basis constituting good cause for that
5 narrow reinstatement action, not the larger action
6 associated with initial issuance of construction permit
7 or for the possible subsequent action of issuing
8 operating license.

9 This is a theme we will revisit repeatedly,
10 today, thus the good cause standard in this context is
11 Commission precedent found in earlier decisions applying
12 Section 185 and regulation, which is 10 CFR Section
13 55(b) to CP extension cases. The Commission decision
14 for purposes of this discussion is in fact Seabrook, at
15 CLI 84.6 and it's discussed in TVA's answer at length on
16 page 21 of its answer.

17 It holds in order to meet the good cause
18 standard and again we quote, "the proponent of the
19 contention must articulate some basis to show "
20 applicant is responsible for the delay, the petitioner
21 here and has acted intentionally and without a valid
22 business purpose.

23 The Commission in Seabrook goes on to explain²⁴
24 when reviewing an applicant's stated reason for good
25 cause, the Board should not substitute its judgment for

1 that of the applicant in selecting among any number of
2 business alternatives consistent with this legal
3 precedents, CLI 1006, Commission limited the scope of
4 this proceeding to direct challenges to TVA asserted
5 reasons that show good cause justification for the
6 reinstatement of the CP, a legal outcome of this
7 precedent.

8 As a result, it specifically stated that this
9 good cause proceeding does not permit the relegation of
10 health, safety or environmental questions that will be
11 resolved at the time of CP issuance, NEPA does not call
12 for a different CONCLUSION come of review required by
13 NEPA that being reinstate o`f the construction permits,
14 not the issuance of new permits or operating license and
15 the petitioners seem to overlook the fact that the NRC
16 has taken action under the environmental assessments and
17 left here whether as a matter of fact, or whether
18 petitioners have articulated some basis to show that TVA
19 is responsible for the delay in construction and has
20 acted intentionally and without a valid business
21 purpose in seeking reinstatement.

22 Thank you Your Honor.

23 >> JUDGE BOLLWERK: All right. Judge Baratta, 25,
24 any questions, you have.

25 >> JUDGE BARATTA: Not at this time.

1 >> JUDGE BOLLWERK: Judge Sager?

2 >> JUDGE SAGER: No.

3 >> JUDGE BOLLWERK: I take it your basic point
4 is you as the applicant, TVA was allowed to define the
5 business purposes behind due cause and that is what
6 controlled basically the scope of this proceeding?

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

8 >> JUDGE BOLLWERK: I'll turn to the NRC
9 staff, then.

10 >> MR. ROTH: David Roth for the NRC staff.

11 In general, the NRC staff agreed with what TVA
12 has just summarized.

13 The main points that we would like to bring up
14 though is that good cause, 185 construction permit,
15 previous hearing requests and previous decisions on
16 those, in fact provide guidance to us.

17 It is appropriate to look to these cases to
18 determine how the Commission would deal with good cause
19 as Your Honors have noted in CLI- 0610, the Commission
20 has stated that good cause is to leave room for us to
21 allow the reinstate the construction permits if they are
22 reasonable and that 'sCLI-0610. Thus, the Commission is
23 equating reasonable with good cause. 26

24 Further, the Commission as Your Honor has
25 noted has stated that reinstatement on particular facts

1 presented here are lawful or proper, is synonymous with
2 good cause.

3 And as the dissent of it in CLI-0610 and 26,
4 the issue is limited and narrow. As TVA's counsel has
5 stated, it is instead a limited and narrow scope
6 pursuant to good cause.

7 Relative to the good cause in the application,
8 the petitioners have stated that they did not have the
9 information, they didn't have application. However, as
10 TVA stated, TVA submitted its reasons for its good
11 cause under the Seabrook Standard. As the staff
12 briefed, the petitioners are required to base their
13 issues on what the applicant has offered for its good
14 cause.

15 In fact, here, petitioners have not done that.
16 Petitioners are outside the reasons that the applicants
17 offer for good cause. Thank you Your Honors.

18 >> JUDGE BOLLWERK: Any questions, Judge
19 Baratta?

20 >> JUDGE BARATTA: Not at this time.

21 >> JUDGE BOLLWERK: Judge Sager?

22 >> JUDGE SAGER: Not at this time.

23 >> JUDGE BOLLWERK: All right. We turn the ²⁷
24 back to the petitioners. Mr. Dougherty, what would you
25 like to say in response?

1 >> Mr. Dougherty: Well, I just point out that
2 counsel for TVA references that part of the Commission's
3 January decision when they said that the scope of this
4 proceeding shall not extend to adjudication of health,
5 safety or environmental questions that were adjudicated
6 30 years ago at the time of the original issuance.

7 Now, they have extended that language to mean
8 there shall be no adjudication of health, safety or
9 environmental issues at all, that all of those subjects
10 are by definition, outside the scope of good cause. But
11 that's not what the Commission said.

12 Commission said no adjudication of health,
13 safety environmental questions if those questions were
14 previously resolved. And I think by implication what
15 the Commission is saying, those types of contentions and
16 issues are fair game if they are newly arisen, if they
17 arise in context of the CP reinstatement, not 30 years
18 ago. And that's what supports our issue under these
19 circumstances.

20 >> JUDGE BARATTA: How would those come up?

21 >> MR. DOUGHERTY: Well, with respect to the
22 traditional contacts that we've done here, we think
23 there is a lot of information about seismic conditions
24 at the site that were not in existence 30 years ago.
25 There is also record evidence that we pointed to

1 suggesting that the initial determinations made for the
2 site regarding flooding and water levels, A, were
3 erroneous. And B, there was a lot of information on
4 that.

5 So we suggest that to the extent there is new
6 information that sheds a new light on these important
7 health, safety, questions, that is fair game for this
8 proceeding. But doubtless of other issues that were
9 resolved in the 70's that are not fair game now.

10 >> JUDGE BOLLWERK: How do you see the
11 relationship between this proceeding and I would say the
12 generic question and the potential operating license
13 proceeding?

14 >> MR. DOUGHERTY: I can't really answer that
15 Your Honor because of unfamiliarity generally with NRC
16 procedures. I understand there's a separate set of
17 issues. It's been a long time since there's been an
18 oral proceeding. I take it those issues are different.
19 I can't answer that. But I will just emphasize, we do
20 not claim we get to re-litigate issues that were
21 litigated or that were decided back when the CPs were
22 issued. We are Focusing on issues where significant
23 new information has arisen since then. 29

24 >> JUDGE BOLLWERK: All right. I think
25 obviously we will be talking about this question about

1 the operating license verses the TVA CP reinstatement,
2 versus even 2206 petitions relative to the individual
3 contentions. I think that is another continuing issue.

4 Anything further you would like to say at this
5 point on this issue?

6 >> MR. DOUGHERTY: No, thank you.

7 >> JUDGE BOLLWERK: Judge Baratta, anything?

8 >> JUDGE BARATTA: Not a this point.

9 >> JUDGE BOLLWERK: And Judge Sager?

10 >> Judge Sager. Not at this point.

11 >> JUDGE BOLLWERK: All right, let's go ahead
12 then and move the first contention. And again we are
13 going to be dealing with seven different contentions,
14 some of which have subparts but we've sort of divided
15 them out so the ones that have subparts are sort of
16 dealt with under the same number.

17 The first one being Contention 3, entitled
18 the environmental assets violated NEPA. And this one
19 had two subparts, one dealing with the -- again if I'm
20 mischaracterizing Mr. Dougherty, correct me -- but one
21 dealing with sort of the process under which the staff
22 did its environmental assessment. And the second one,
23 the requirement, the need for the agency to actually ~~30~~
24 a full environmental impact statement.

25 Those were the two provisions I think. How

1 would you like to divide your time?

2 >> MR. DOUGHERTY: For this and the remaining
3 contentions, I would like to divide my time equally
4 between opening statement and rebuttal.

5 Did you say there's going to be an indication
6 when my time is expiring?

7 >> JUDGE BOLLWERK: Yes, I will give you an
8 indication when to wrap it up.

9 >> MR. DOUGHERTY: Well, as you point out, we
10 had two contentions back then. We had two basic
11 positions that we presented in our petition. One is
12 that is to the extent the staff has conducted a NEPA
13 analysis of this decision and that was the environmental
14 assessment done last February, as I recall, that
15 environmental assessment did not meet the prevailing
16 standard for legal advocacy. And we would like to
17 challenge that document.

18 We challenge that on a number of grounds. We
19 said last May that it was inappropriate to conduct
20 environmental assessments after the Commission made a
21 decision to reinstate the CP. Since then, of course,
22 the Commission has reaffirmed that decision so that
23 changes the timing of that allegation. But in our 31
24 petition, we've also identified a number of other
25 deficiencies in the Environmental Assessment. For

1 example, it fails to consider changes that have taken
2 place in the aquatic ecological system of the Tennessee
3 River. There is a lot of new information exist
4 regarding fish and shellfish populations. Environmental
5 assessment overlooks that entirely. And the
6 Environment Assessment does not look at the cumulative
7 impacts of reinstating the CPs for 1 and 2 and the
8 anticipated licensing of Units 3 and 4.

9 So we think there are a number of
10 deficiencies in their environmental reading. And we
11 also contend in 3-B that an action with this kind of
12 environmental significance meets the statutory threshold
13 that triggers EIS requirement. And EIS is required for
14 this CP reinstatement just as EIS is required for
15 initial CP or for operating license or combined license.
16 And this may be an instance where we disagree with the
17 Commission.

18 And I think the staff and TVA is saying that
19 this contention is outside the scope of the proceeding
20 because they are environmental. We don't think that is
21 what the Commission meant. But if is, we think that it
22 violates the text of the meaning itself. The statute
23 imposes its own requirements. Ultimately those should
24 be rejected by the courts. And we think that under
25 NEPA, it is a statutory argument. EIS is required here.

1 I will note that there are a lot of NEPA
2 reviews underway here. TVA is conducting environmental
3 impact statement in connection with its IRP process.

4 They have also prepared a draft supplemental
5 EIS for Bellefonte 1 and 2.

6 These are big decisions with big environmental
7 implications. And the reinstate of CPs is exactly the
8 same. It deserves and requires an environmental impact
9 statement. That concludes by presentation.

10 >> JUDGE BOLLWERK: All right. Any questions
11 at this point? Judge Sager?

12 >> JUDGE SAGER: Yes. I'm trying to figure
13 out the scope of this environmental assessment.

14 It's my impression that for construction
15 permit, we are dealing with the impacts of construction
16 and not the impacts of operation which just dealt with
17 the operating license. Am I wrong in that?

18 >> MR. DOUGHERTY: I don't have a good answer
19 to that, Judge. I'm sorry, I don't know. You may be
20 correct. I take it that's your point? I take it that's
21 your point is that the scope of the assessment should
22 be limited to construction?

23 >> JUDGE SAGER: I'm just asking whether I was
24 wrong on that?

25 >> MR. DOUGHERTY: I don't consider myself an

1 authority on that, but I will say that we have faulted
2 the environmental assessment for its failure to
3 consider the cumulative impacts of all the proposals
4 before TVA and NRC. And they have proposed not only to
5 reinstate CPs for 1 and 2 but also to build through 3
6 and 4. And what they have attempted to do in all their
7 environmental documents including environmental
8 assessment is to segregate it, to say, well, this is
9 focused just on the CP reinstatement. This is focused
10 just on the CP relicensing. And we argue that under
11 NEPA, that a comprehensive review must be done.

12 That was not done in the environmental
13 assessment. So even if the scope was limited to
14 construction, it is still too narrow.

15 >> JUDGE SAGER: Okay, thank you. That's all
16 Judge Bollwerk.

17 >> JUDGE BOLLWERK: I think you have given us
18 a consensus but let me ask this any way. There were
19 construction permit extensions years ago that were
20 granted on a regular basis, had some minimal
21 environmental assessment done.

22 Again, you're saying this is different because
23 it is just too generous, that it requires more? 34

24 >> MR. DOUGHERTY: No, this is different
25 because we contacted a situation where the company is

1 seeking more time to complete construction in an
2 ongoing NRC oversight role. You have constant
3 reporting, you have inspections, you have close
4 cooperative relationship between the company and the
5 NRC.

6 In this case, TVA walked away from the plant.
7 They turned the lights out. Who knows what happened in
8 that plant for those three years, if there was rust,
9 humidity, temperatures, environments, we don't know.
10 What we do know from the record is that TVA sent in
11 contractors with saws who started cutting up tubings,
12 steam generators, basically we don't know and walking
13 away with it.

14 So this -- when I say "too generous" Yes, in
15 a very significant environmental regulatory way.

16 We don't know what happened there. And if
17 they did remove point of the record, tens of millions of
18 dollars of equipment, this Board wants to know how they
19 are going to solve that problem. If they are going to
20 install new steam generators, what are those going to
21 look like?

22 What kinds of steam generators are they going
23 to put in. 35

24 >> JUDGE BARATTA: I don't understand how that
25 would be any different than what was written and

1 authorized under the COL.

2 Steam generator is steam generator. It's not
3 like we're going to something that is so totally alien.

4 You're mixing two points here. You're mixing
5 a point that things were done at the facility which
6 don't seem to have any relationship to your claim that
7 should be, we filed a completed environmental review as
8 opposed to one you later claimed. I don't see it
9 attaching --

10 >> MR. DOUGHERTY: Well, Judge, we don't
11 really know what happened here. We would like to find
12 out and if this contention is established, then we will
13 get the documentation. But based on the limited
14 information we have seen, they have gone in there and
15 just removed sections of pipe.

16 >> JUDGE BARATTA: But from an environmental
17 standpoint, so what.

18 >> MR. DOUGHERTY: Well, I think if you were
19 to take out half of a steam generator and years later
20 come back and try and re-install another half, that
21 would impose a profound technical engineering question.

22 >> JUDGE BARATTA: That may be but that is not
23 an issue for EIS, though. Looks like to me, you're 36
24 mixing apples and oranges.

25 >> MR. DOUGHERTY: I think it poses technical

1 questions in terms of making a finding that the NRC has
2 to find before it issues the CP. I think there EIS are
3 important safety questions here.

4 >> JUDGE BARATTA: That may be but not
5 environmental ones. You're -- this contention deals
6 with whether or not either the ER was inappropriately
7 done because of the timing issue, and also, whether or
8 not an EIS should have been done instead of ER, not
9 relevant to whether or not the steam generator or piping
10 or something like that was installed.

11 >> MR. DOUGHERTY: Well, I actually construed
12 judge Bollwerk's question to be somewhat broader. It
13 pointed to cases where companies that sought
14 extensions of CPs. And in those cases, the good cause
15 standard was held out and that's why I said generally
16 applicable to this situation.

17 Environmental questions on the environment, as
18 I pointed out, things have changed the climate has
19 change, economy has changed, new information.

20 So those factors should shift environmental
21 limit.

22 >> JUDGE BOLLWERK: Anything further, Judge
23 Baratta?. 37

24 >> JUDGE BARATTA: No.

25 >> JUDGE BOLLWERK: Judge Sager, do you have

1 anything for the petitioners?

2 >> JUDGE SAGER: Nothing further.

3 >> JUDGE BOLLWERK: All right, let's go ahead
4 and move to TVA.

5 >> MS.SUTTON: Thank you. Both parts of
6 Contention 3 are inadmissible.

7 Turning first to 3-A, as Judge Baratta has
8 recognized, the Petitioner here this morning has started
9 to blur arguments that are addressed in other
10 contentions regarding aging equipment, cumulative
11 impacts, aquatic effects into his argument here. And
12 that will be fully addressed in our other discussion.
13 So I will turn to 3-A.

14 JUDGE BOLLWERK: Five minute, is that --
15 basically you split your time in half.

16 MS. SUTTON: Yes, sir. 3-A alleges that the
17 NRC violated NEPA because it purported authorized
18 reinstatement of the CP before completion of the
19 environmental assessment. As I will explain, this
20 challenge not only falls outside the scope of this good
21 cause proceeding, but it is factually, inaccurate and
22 for this reason, it must be rejected. First, 3-A
23 challenges the Staff's action, under NEPA as opposed ~~38~~.
24 TVA's good cause justification for reinstatement. As a
25 result, it falls outside the scope of this proceeding

1 contrary to Section 2.309 (f) 13.

2 In their Reply and argument here today,
3 Petitioners claim that challenge to staff action under
4 NEPA is within the scope of this good cause proceeding.
5 And we disagree for the reasons that we set forth
6 earlier during the discussion of the scope of this
7 proceedings and the associated meaning of the good
8 cause standard. Moreover, and most importantly, this
9 conclusion is driven by the plain recognition that 3-A
10 has no basis, in fact contrary to 2.309 (f) 15.

11 As a matter of record, the NRC quite clearly
12 did not authorize reinstatement of the construction
13 permits B-4 discharge its obligations under NEPA.

14 Let's review the time line on this. The
15 Commission 's staff requirement memorandum or SRM dated
16 February, 18, 2009 authorized the Staff to issue an
17 order reinstating the CPs and placing the facility in
18 terminated status, but only upon completion of its full
19 review and acceptance of TVA's request including the
20 preparation of an environmental assessment. The latter
21 is fully described in Secy, 080041 and briefed in our
22 answer at page 25.

23 The staff then issued its environmental 39
24 assessment on February 24, 2009 and published the
25 document in the federal register on March 3rd, 2009.

1 An order reinstating the CP was issued on
2 March 9, 2009 and published in the federal register on
3 March 13, 2009. Thus the staff fully complied with NEPA
4 by completing and publishing the EAD for reinstatement
5 of the CP. And again, this fails to raise a genuine
6 disputes of material issue of law or fact and must be
7 rejected as contrary to 2.309 (f) 16. Turning to 3-B,
8 petitioners claim that NEPA requires the NRC to prepare
9 an EIS as opposed to an EA for the proposed action
10 because licensing and permit processes are underway both
11 for the construction with Units 1 and 2 as well as
12 construction and operation of 3 and 4 pursuant to a
13 combined license or COLA.

14 Petitioners further claim the legal
15 segmentation of cumulative issues under NEPA in view of
16 the possible co-location of multiple units on a single
17 site.

18 Again, 3-B is inadmissible because it lacks a
19 nexus to TVA's good cause justification for
20 reinstatement of CPs contrary to 2.309(f) 13.

21 But even putting aside this deficiency, 3-B
22 is inadmissible for several independent reasons. First,
23 an EIS is not required for the challenged action. There
24 are no ongoing licensing and permanent processes for
25 Bellefonte Units 1 and 2.

1 The purpose of reinstatement is to allow TVA
2 to further assess the viability of completing plant
3 construction and thereafter possibly obtaining operating
4 licenses for the unit. Therefore, no EIS is required.

5 It is not we can of the agency action listed
6 in section 51.20 as requiring an EIS.

7 Second, the NRC staff quite properly does not
8 address, cumulative impacts of building and operating
9 four units at the Bellefonte site.

10 TVA has not made a final decision to complete
11 construction of Units 1 and 2 nor has the NRC authorized
12 it to do so. It cannot resume reactor construction
13 until other actions are taken consistent with the
14 Commission's March, 2009 order and deferred plant policy
15 statement.

16 Moreover, the Commission ruled in the McQuire
17 case, that cumulative impacts of a future project need
18 only be considered if there is a proposal for the other
19 project, and if there is an independence, an
20 inter-dependence between them. Following that
21 precedent, this same Board in the ongoing Bellefonte
22 COLA proceeding rejected the same argument proffered
23 herein by the petitioners finding that TVA's request ~~4p~~
24 reinstate the Unit 1 and 2 CP does not constitute a
25 proposal that is inter-dependent with the Bellefonte

1 unit, 3 & 4 COL application that is before the agency.

2 Third: The NRC has not illegally segmented
3 its NEPA review of TVA's reinstatement requesting COL
4 application. The two actions are separate and distinct.

5 TVA has not proposed to construct and or
6 operate four units. Either project may proceed or not
7 proceed inter- independent of the other.

8 As explained in TVA's answer at page 36, the
9 Board should reach the same conclusion on this
10 purported segmentation issue as they did in the
11 Bellefonte COLA proceeding rejecting 3-B in its
12 entirety. For these many reasons, 3-B lacks factual or
13 legal basis and thereby fails to raise a legal dispute
14 on material issue of law or facts contrary to Section
15 2.309(f) 15 and 6 and it too is therefore, inadmissible.

16 >> JUDGE BOLLWERK: I believe that the thrust
17 of the petitioners argument is, if not now, when.

18 I mean, there's a lot that's happened as they
19 point out over 30 years. When are all these issues
20 going to be discussed?

21 One of the questions about -- which is
22 clearly pending about some aquatic impacts --

23 >> MS. SUTTON: Clearly, if there are curre~~42~~
24 safety issues, they can use the 2.206 process currently
25 before the Commission. There will also be, as you know,

1 a CP extension that would be necessary perhaps in this
2 proceeding if TVA determines that this is viable and
3 proceeds. And there would be a NEPA analysis conducted
4 as part of that CP extension.

5 Most importantly, here, if TVA ultimately
6 decides to proceed with operating licenses for these
7 units, then, there would be an additional NEPA analysis
8 at that time as well as an opportunity for hearing.

9 So there are many opportunities, Judge
10 Bollwerk. It's just that this particular reinstatement
11 request is particularly narrow in scope and the issue
12 that they are seeking to litigate under NEPA
13 admissibility are not right in this particular
14 proceeding.

15 >> JUDGE BOLLWERK: Although their fear is
16 once this gets wound up, it it takes on a life of its
17 own, will anybody look at it seriously.

18 >> MS. SUTTON: They have the same opportunity
19 to meet the admissibility standards under 2.309 in the
20 COL application proceedings, for example to raise the
21 sort of issues that they are they are trying to raise in
22 this proceeding, as we will describe later in
23 conjunction with several others of their contentions.⁴³

24 >> JUDGE BARATTA: Let me ask you, you
25 mentioned the operating license. I'm looking at Part

1 50.

2 Are you referring to the section where it says
3 as part of the application for operating licensing, it
4 says, all current information such as the result of
5 environmental ERs monitoring, program should be
6 included? I'm kind of paraphrasing.

7 >> MS. SUTTON: That is correct, Your Honor.

8 >> JUDGE BOLLWERK: Anything further at this
9 point?

10 Judge Sager, anything for TVA?

11 >> JUDGE SAGER: Nothing from me.

12 >> JUDGE BOLLWERK: All right. Let's turn to
13 Staff.

14 >> MS. BOOTE: Good morning. I'm Christine
15 Jochim Boote for the NRC staff. With respect to
16 Contention 3, general matter, the Commission narrowly
17 limited the scope of this hearing to whether good cause
18 exist for reinstatement. As a result, 3-A and 3-B are
19 outside the scope of this proceeding. Contentions
20 should address whether good cause exist, not NRC staff's
21 actions.

22 Petitioners arguing Contention 3-A that the
23 EA was illegally prepared after the Commission decision
24 was made. And as the applicant has stated, this is
25 just factually inaccurate. On February 18, 2009 the

1 Commission issued its authorization to staff to go
2 forward with review of TVA's reinstatement request. And
3 subsequently on March 3rd, 2009 the staff's EA was
4 published in the Federal Register. On March 9,2009,
5 staff issued an order reinstating the construction
6 permits, to terminate its status and which was
7 subsequently established on March 13..

8 The Commission expected the staff to make an
9 independent decision after conducting its review
10 pursuant to 10 C.F.R. 5121.

11 As such, the staff fulfilled its NEPA duties
12 prior to agency action. In Contention 3-B Petitioners
13 assert that the EIS is required for major federal
14 actions and they cite the 5120 (b) 2. Petitioners have
15 not identified legal requirements that staff must
16 conduct in advance for the reinstatement of the CP.
17 5120 (b) requires that a full EIS be conducted for
18 major federal actions such as actions involving license
19 to operate or an original construction permit.

20 This reinstatement request is neither of those
21 situations. Furthermore, Petitioners argue that the
22 Staff should have assessed cumulative impacts of the
23 operation of Bellefonte 1 through 4. 45

24 Staff's EA address cumulative impact with
25 respect to potential construction of Units 1 and 2 and

1 includes information related to the COL application for
2 Units 3 and 4.

3 Staff did not need to address units 1 through
4 4. This action is about the environmental impacts of
5 the reinstatements of the CPs, not an application for
6 a license to operate.

7 >> JUDGE BOLLWERK: Given the -- admittedly,
8 this is not the things that you can set out there but
9 there is something that -- I don't know that regulations
10 even ever contemplate.

11 Why doesn't their request that their issue
12 relative to an EIS simply stay a legal issue, that the
13 Board ought to admit and put down for briefing.

14 >> MS. BOOTE: Why doesn't it seek a legal
15 issue?

16 >> JUDGE BOLLWERK: Yes. In other words, is
17 there a requirement here for a environmental impact
18 statement given that it doesn't seem like much that is
19 in the regulation really cover this.

20 >> MS. BOOTE: Well, Petitioners cite to
21 51.20 which doesn't actually apply in this situation,
22 that would be for an initial construction permit. This
23 is a new area and we followed 51.21 and evaluated the
24 EA. And through EA, the staff could have decided that
25 an EIS was necessary but in this case, we didn't.

1 >> JUDGE BOLLWERK: I guess one of the things
2 that's troubling me -- is probably not the right word
3 -- but I'm concerned about or want to make sure that I
4 understand, is sort of the process going forward here
5 because there is a lot going on as everyone here has
6 pointed out. And when you look at how this has played
7 out up to this point, we had the CP reinstatement which
8 put the plant back in terminated status.

9 That generated from the Staff an environmental
10 assessment and and a SER essentially. And there was a
11 hearing opportunity notice.

12 But then, when we came to the deferred plant
13 status request from the applicant, there was no
14 environmental assessment, there was no SER, at least as
15 I understood it from reading the documents, and no
16 hearing opportunity notice.

17 All right. Then the next step maybe could be
18 one of two things, could be a CP extension. Both of
19 these construction permits, one expires in November of
20 2011, the other expires in November of 2014. Would the
21 staff at that point do an EA or an EIS?

22 >> MS. BOOTE: Staff would do a EA at that
23 point. 47

24 >> JUDGE BOLLWERK: What about an SER?

25 >> MS. BOOTE: Staff would do an SER at that

1 point.

2 >>> JUDGE BOLLWERK: What about a hearing
3 opportunity notice?

4 >> MS. BOOTE: Yes.

5 >> JUDGE BOLLWERK: The other thing that's
6 possible would be that TVA is going to give some kind of
7 notice under the deferred plant policy for the
8 resumption of construction. I understand they have to
9 give 120 days notice before they resume construction
10 assuming they wish to do so.

11 Does the Staff do an environmental assessment
12 for that?

13 >> MS. BOOTE: That is correct. Excuse me,
14 I'm sorry.

15 >> JUDGE BOLLWERK: So the construction
16 resumption notice generates an environmental
17 assessment?

18 >> MS. BOOTE: NO, I'm sorry, it does not.

19 >> JUDGE BOLLWERK: What about an SER?

20 >> MS. BOOTE: No, it does not.

21 >> JUDGE BOLLWERK: What about a hearing
22 opportunity notice?

23 >> MS. BOOTE: No, it does not. 48

24 >> JUDGE BOLLWERK: Then, relative to the
25 operating license application, does that involve

1 environmental assessment or EA?

2 >> MS. BOOTE: That's correct.

3 >> JUDGE BOLLWERK: What about an SER?

4 >> MS. BOOTE: Yes.

5 >> JUDGE BOLLWERK: I guess in accordance with
6 Watts Bar, there will be a hearing opportunity?

7 >> MS. BOOTE: That's correct.

8 >> JUDGE BOLLWERK: With respect to Units 3
9 and 4, and obviously, that's something this Board
10 although we are the same members of the Board for the
11 combined license case, here except we have separate
12 authority to do this but happens to be a Board with the
13 same members, there is a statement in the CP
14 reinstatement, environmental assessment that says, if
15 construction activities resume for Bellefonte Units 1
16 and 2, TVA would need to assess the Bellefonte Units 1
17 and 2 construction impacts relative to Bellefonte Units
18 3 and 4. That's on 74 federal register at page 9314.
19 What does that mean?

20 >> That means Bellefonte --

21 >> JUDGE BOLLWERK: It sounds like the
22 decision to resume construction after the 120 day notice
23 is going to trigger some need to assess the impacts of 1
24 and 2, on Units 3 and 4.

25 MS. BOOTE: That's correct.

1 >> JUDGE BOLLWERK: Under what egis would that
2 be? Is that under this process? Is it with Units 1 and
3 3 or under Units 3 and 4?

4 >> Under the ER agreement for 3 and 4 would
5 have to be modified as Units 1 and 2.

6 >>> JUDGE BOLLWERK: So at that point, 3 and 4
7 need to be modified to deal with construction of Units 1
8 and 2?

9 >> MS. BOOTE: Correct.

10 >> JUDGE BOLLWERK: Maybe then, you can let us
11 know or maybe this is a question for TVA, I'm not sure.
12 TVA has issued a notice of intent to prepare a
13 supplemental EIS to this 1974 construction permit
14 environmental statement for a single nuclear unit to
15 Bellefonte site at page 74, federal register. I believe
16 40,000, August 10 of 2009 to assess one BMW unit and
17 one AP 1000 unit.

18 What is the status of that at this point?

19 >> MS. SUTTON: I will defer to Mr. Vigluicci.

20 >> JUDGE BOLLWERK: All right.

21 >> MR. VIGLUICCI: Judge Bollwerk, the draft
22 has been issued and the SCIS and we are now considering
23 comments received on the draft. And we will anticipate
24 filing a final EIS in the future.

25 >> JUDGE BOLLWERK: And I think that was done

1 to sort of cover the basis of having one of each? Why
2 was it done? I was sort of interested to know why it
3 was put out there?

4 >> MR. VIGLUICCI: TVA is a federal agency so
5 any decision to go forth on the Bellefonte site has to
6 be supported by a NEPA record. And we are considering
7 at this point, is just the construction operation of a
8 single unit on that site, be it a partially constructed
9 unit, 1 or unit 2 or AP 1000 unit. Or third alternative
10 is not proceeding on any alternative at this time.

11 >> Since we are having a discussion, let me
12 ask you a question: In terms of the resumption notice
13 that might be put out, does that require TVA to do any
14 type of environmental assessment or safety review?

15 >> MR. VIGLUICCI: If we're going to go
16 forward with a single unit at the site, that's with the
17 present EIS, that's our record for that so that will
18 support that decision. So our Board of Directors will
19 make a decision whether or not to proceed with a single
20 Bellefonte BMW or A P1000 unit and will use that NEPA
21 document to inform its decision.

22 Thereafter, if we decide to go with the BMW
23 route, the single BMW partially constructed unit, the⁵¹
24 we would thereafter issue our 120 day letter to the NRC
25 giving notice at some point in the future.

1 >> JUDGE BARATTA: So no additional documents
2 filed for a single unit?

3 >> MR. VIGLUICCI: Other than the EIS that is
4 currently going on right now, no. There would no
5 separate environmental document for our 120 day
6 notice. As a federal agency, we would not do another
7 environmental review. That NEPA, the SCIUS would
8 support moving forward and licensing a single unit from
9 a NEPA standpoint.

10 >> JUDGE BOLLWERK: Just so that I understand
11 if there is one, what is the relationship between what
12 the staff is doing relative to its review of the CP or
13 potential resumption of construction, and that
14 environmental impact statement that TVA just discussed?
15 How does that work into your process, if it does?

16 >> MS. BOOTE: I'm sorry, could you repeat the
17 question?

18 >> JUDGE BOLLWERK: Sure. Well, what you
19 said is that there would not be an environmental
20 assessment or EIS done in the event that TVA issued its
21 resumption notice. Sounds like TVA is doing an
22 environmental assessment relative to the possibility
23 of operating a single reactor to help inform that 52
24 decision.

25 Would you do anything with that environmental

1 impact statement? How would you incorporate that into
2 the NRC review process?

3 >> MS. BOOTE: It may be incorporated into a
4 review of Units 3 and 4 or potentially if they issued a
5 operating license application at that time.

6 >> JUDGE BOLLWERK: And relative to the things
7 I discussed with Staff, I will turn to TVA for a second.
8 Are there any instances where you feel you would be
9 doing additional environmental assessment or additional
10 safety reviews in terms of -- I take it the CP
11 extension, you would have to do something; is that
12 correct?

13 >> MR. VIGLUICCI: Yes, we did the
14 environmental assessment ourselves for the CP
15 reinstatement first. So not only did the staff do one,
16 but TVA before we submitted our request, we had to do an
17 environmental assessment. And we're doing the
18 environmental review right now on a single unit. And
19 typically, how this has worked in the past, if we decide
20 to go forward with an operation license application,, if
21 we decide to prosecute -- to our Board of directors
22 tells us that's the way to go we typically use the
23 environmental information in our SEIS to inform our 53
24 environmental report that goes to the staff.

25 So we will use that has a base document to

1 draw from that, and as part of our application to the
2 staff for our operating license application for the BMW
3 unit.

4 >> JUDGE BOLLWERK: Let me also since I'm back
5 with you, I'll address this question: Why isn't the
6 question of whether the need for an EIS here, why isn't
7 it a legal issue we ought to admit and sit down for
8 briefing.

9 >> MS. SUTTON: Because Your Honor, NEPA as a
10 statute is tied to the scope of the federal action at
11 issue And in this particular case, as we explained,
12 begin with reinstatement as a very narrow scope action.
13 It is not equal to the issuance of CPs , for example.
14 So the scope of the environmental assessment under NEPA
15 in this case was very narrow. It was a EA and was
16 consistent in addition not only to the statute, but
17 with 51.20.

18 >> `JUDGE BOLLWERK: All right. Judge
19 Baratta, do you have any questions for either Staff or
20 TVA since I sort of brought them both in?

21 >> JUDGE BARATTA: For the staff, in looking
22 at Part 50, it would appear that when you go to the
23 operating license stage, you have to update all of your
24 environmental documents; is that correct?

25 >> Mr. Boote: That's correct. Yes.

1 >> JUDGE BARATTA: So given the concern about
2 whatever information has accumulated over the last 30
3 years or so, would that not then have to be taken into
4 account at that point?

5 >> MS. BOOTE: That would be considered when we
6 evaluate a potential operating license, that's correct.

7 >> JUDGE BARATTA: And it would clearly be
8 within the scope of that licensing proceeding?

9 >> MS. BOOTE: I can't say that without
10 actually seeing the contention at that stage but
11 presumably, it would be.

12 >> JUDGE BARATTA: And it would be then notice
13 of opportunity for hearing?

14 >> MS. BOOTE: Yes, that's right.

15 >> JUDGE BARATTA: Thank you.

16 >> JUDGE BOLLWERK. That's sort of the rub
17 isn't it, you won't really know what's going to go in
18 when an EIS -- for the operating license until the time
19 comes?

20 >> MS. BOOTE: That's correct.

21 >> JUDGE BOLLWERK: They may come in or may
22 not. The concerns they raised here may come in and they
23 may not. 55

24 >> MS. BOOTE: Those concerns may or may not
25 be addressed by EIS. They may not be an issue any more

1 for them.

2 >> JUDGE BOLLWERK: Judge Sager, do you have
3 anything?

4 >> JUDGE SAGER: I was also curious about when
5 this becomes updated a plant built in 1974 standards
6 might have trouble passing a 2015 review. So is there
7 any mechanism or am I understanding it correctly that
8 those issues just will not come up until the operating
9 license?

10 >> MS. BOOTE: That's correct, Your Honor.

11 >> JUDGE SAGER: All right, thank you.

12 >> JUDGE BOLLWERK: Judge Baratta, anything
13 else?

14 >>JUDGE BARATTA: No.

15 >> JUDGE BOLLWERK: Judge Sager?

16 >> JUDGE SAGER: Nothing further.

17 >> JUDGE BOLLWERK: Let's turn back to the
18 Petitioners, then.

19 >> MR. DOUGHERTY: Well, Judge, this colloquy
20 between yourself and Staff and TVA has been enlightening
21 in several respects. It was interesting to hear counsel
22 for Staff say they could not find regulation requiring
23 EIS so therefore, no EIS is required. EIS is required⁵⁶
24 by statute. It's the statute itself that requires EIS.
25 If there is no regulation, it does not really matter and

1 that of course if it goes to our contention, as you
2 suggest, this is a legal requirement.

3 But I think what I was really struck by during
4 this conversation was that the two different approaches
5 that TVA and NRC are taking to NEPA compliance. And it
6 historically, a lot of agencies have seen NEPA
7 compliance's red tape, documents you have to prepare
8 before the end of the process. But what the EIS or even
9 environmental assessment is intended to do is to be in
10 front of the decision-maker at the time the decision is
11 made so that these decisions are more environmentally
12 informed.

13 And what TVA is doing is saying, what we are
14 proposing to complete construction on Units 1 and 2 and
15 what we are doing is we are taking the 1974 EIS and
16 supplementing. So they issue a draft, supplemental EIS
17 and they held public hearing. And as counsel just
18 stated, once that process is complete, then it will
19 go to to TVA Board and they will decide, do we want
20 complete construction or not. Staff, however says,
21 first of all, the Commission has already reinstated the
22 permit and now, we're in a proceeding considering
23 reinstatement of a permit. And the Staff is saying 57
24 environmental review is necessary until the OL stage or
25 perhaps at some other future stage. But it's after the

1 key decision's being made.

2 Our point is that if NEPA compliance is
3 meaningful, it has to be done now because the
4 authorization by the Commission or the reinstatement of
5 CP sets in motion, a chain of dominoes of investments by
6 TVA because we know from the recent pleadings dealing
7 with attendant failure they have staff and consultants
8 and contractors all over the site inspecting making
9 staff -- we don't know what they are doing but a lot of
10 money being poured into in and not to mention lawyer
11 fees. So financial concrete is being poured around this
12 project and the momentum builds every passing day. You
13 can't do a NEPA analysis five years from now. Now is
14 the time to decide if this really makes sense in light
15 of all the issues we've raised whether there is
16 environmentally available power and over cost.

17 Now, what TVA is saying is well, we really
18 haven't decided if we are going to complete
19 construction 1 and 2. And so therefore, it is
20 inappropriate now to review the environmental impact.
21 But we want you to give us the legal authority any way
22 which can amount to someone going for a driver's
23 license and saying I don't know I will be driving or58
24 not so, don't test my eyesight because it is not
25 necessary until I really make up my mind. But I'd like

1 the driver's license now any way. Please give me the
2 authorization.

3 That's undoes the whole process. They can't
4 begin to do the work until they get the authorization
5 and say not until a later stage can it be meaningful
6 environmental information.

7 The NRC has to assume that whenever an
8 applicant comes to it saying we want authorization to do
9 X, that they will in fact do X.

10 And you don't know if they will do X. They
11 may decide not to do X. And as what happened here,
12 they may build half a plant and then back away.

13 You never know.

14 In those cases, one could argue that the
15 regulatory review time is wasted because they never
16 completed construction, all the environmental harms are
17 evaluated and never came to pass so maybe it is a waste
18 of time. And that's the way it has to be. NRC has to
19 conduct those reviews in a meaningful way on the
20 assumption assumption that this will all take place.

21 That is the posture we are in now.

22 We have to assume that TVA will act and
23 reinstate the CP and therefore, we evaluate the 59
24 environment in that context, even though we know they
25 might not.

1 The final thing I wanted to add is that staff
2 and TVA responded to our contentions as we wrote it last
3 May in which we said the Commission violated the law by
4 first, reinstating the CPs in January and then issuing,
5 environmental assessment in February. Since then,
6 facts have changed. Not only were there a federal
7 register in March but a month ago, as we all know, the
8 Commission reaffirmed its decision.

9 So that whole timing question has sort of been
10 mooted by events but the point, our petitions contend
11 that the environmental assessment is deficient in a
12 number of respects and so considered cumulative impacts.
13 And so we think that those claims survive any subsequent
14 Commission issues. That concludes my rebuttal.

15 >> JUDGE BOLLWERK: Judge Baratta?

16 >> JUDGE BARATTA: Nothing further.

17 >> JUDGE BOLLWERK: Judge Sager. Nothing
18 here.

19 >> JUDGE BARATTA: I would like to hear a
20 response from staff with regards to the inconsistency
21 that the Intervenor claims. Can you provide any
22 thoughts on that?

23 >> MS. BOOTE: As an initial response, I want
24 to say there was no regulation applied in this
25 situation, simply that 51.20 does not apply in this

1 situation 51.21 does however and and that staff NEPA
2 requirements has been fulfilled in this case before any
3 decision.

4 >> JUDGE BARATTA: I was referring to the
5 inconsistency and the fact that the applicant, TVA says
6 that they have to do a supplemental EIS and Staff says
7 staff does not have leave to do.

8 >> Staff does not have to do EIS.

9 I believe I seconded in doing an EA staff
10 could after determining that an E was necessary and
11 however, it did not come to hour attention that it
12 needed to conducts an EIS so it is limited to that
13 narrow scope so new issues related to that didn't come
14 it.

15 I'm not sure if I answered your question?

16 >> JUDGE BARATTA: I'm not sure either.

17 >> Are you asking about why TVA are not AEs
18 and not EISs?

19 >> JUDGE BARATTA: Well, it does seem odd that
20 the TVA would decide to do a supplemental EIS and staff
21 would do an EA.

22 I think what the TVA -- and I would like to
23 ask this question, you're doing the supplemental EIS⁶¹
24 for the actual decision to go forward with
25 construction?

1 >> MS. SUTTON: Yes, Your Honor, that is a key
2 point there, two different decisions. One is for the
3 Board to decide whether it will proceed with
4 construction and the question posed to staff was
5 reinstatement of the CPs, two separate issues.

6 >> JUDGE BARATTA: Staff talks about the EA
7 relative to proceeding with reinstatement.

8 >> MS. BOOTE: That's correct.

9 >> JUDGE BARATTA: Which is a very narrow
10 scope and therefore, would not automatically kick in a
11 supplemental EIS.

12 >> MS. BOOTE: That's correct.

13 >> MS.SUTTON: And consistent with that Your
14 Honor, they also did an EA reinstatement and came to
15 the same conclusion, just that the supplemental EIS is
16 for the Board and whether or not to construct.

17 >> JUDGE BARATTA: The original EIS was done
18 30 year ago was for construction of the two units, is
19 that correct?

20 >> Construction and pop per rail operation of
21 the two units.

22 >> JUDGE BARATTA: why then, would the staff
23 leave -- did you not I guess you did do an EIS but an EIR
24 was submitted to the agency, was for construction of two
25 units, right? Because you still have to put one in for

1 the operating. So why then would not that trigger a --
2 you only go forward with one unit, why doesn't that then
3 require a supplement to your ER that was done 30 years
4 ago?

5 >> MR. VIGLIUICCI: It would if we go forward,
6 we decide to construct that single unit, we are doing to
7 have to amend our operating license application for the
8 BMW unit.

9 >> JUDGE BARATTA: But not the construction.
10 It looks like there's some sort of
11 inconsistencies here where the original one was for two
12 units.

13 >> MR. VIGLIUICCI: Construction operation of
14 two units.

15 >> JUDGE BARATTA: But if you go forward with
16 construction and operation of single unit, why doesn't
17 that then trigger a supplement to the original ER then
18 associated with the CP. They are the same.

19 >> MR. VIGLIUICCI: It is a supplement. We are
20 supplementing our original 1974, TVA is on this day.

21 >> JUDGE BARATTA: That's TVA's EIS.

22 I'm talking about the application that was
23 submitted to the agency 30 years ago which had an ER
24 and a PSAR, correct? 63

25 >> MR. VIGULICCI: Correct.

>> JUDGE BARATTA: And the ER that was put in

1 at that time had the construction two units.

2 Did it look on the construction of single
3 units?

4 MR. VIGULICCI: It looked at two units.

5 >> JUDGE BARATTA: My question then still
6 stands, if that is the case, you only go forward with
7 one unit, why does that require an amendment to the ER
8 submitted and accepted by this agency 30 years ago?

9 >> MR. VIGLIICCI: I think my point is if we do
10 decide to go forward, we will amend our operating
11 license application with an additional ER that will
12 address one units.

13 >> JUDGE BARATTA: But you will not go back
14 and supplement the CP?

15 >> MR. VIGULICCI: That is correct.

16 >> JUDGE BOLLWERK: Anything staff want to say
17 in that regard? You're conferring among yourself.

18 Mr. Dougherty, will get the final word.

19 >> Just one minute.

20 >> MS. SUTTON: Your Honor, one of the reasons
21 there is really no need for supplementation is that the
22 presumably, the two unit analysis without a single
23 analysis has been the agency's precedent not only he~~64~~
24 but historically, not to go back and redo it.

25 >> MS. BOOTE: Assuming that TVA would

1 propose in an operating license application, before the
2 staff, would evaluate whether or not to prepare the
3 final environmental impact statement pursuant to 51.95
4 (b), we believe that answers your question.

5 >> JUDGE BOLLWERK: Thank you.

6 Judge Sager, anything you want to put in at
7 this point?

8 >> JUDGE SAGER: Nothing from me.

9 >> JUDGE BOLLWERK: Mr. Dougherty, is there
10 anything you would like to say?

11 >> MR. DOUGHERTY: Only Judge, that as I said,
12 the petitioners considered the reinstatement s of the CP
13 tantamount to its issue in the first instance. But
14 even if it falls short of that, we interpret
15 reinstatement as in effect, a green light to the
16 applicant to be in a construction status that in effect
17 authorizes them to resume construction.

18 There may be some intermediate steps upgraded
19 their status on the deferred plant policy to terminate
20 the deferred and could be another 120 day period here
21 and there. But any member of the public or Court would
22 see it, granted a new or had restoration to resume
23 construction must be considered as construction now 65
24 authorized and if a EIS is done by staff in one of these
25 upcoming intermediate stages, they can certainly argue

1 that they can satisfy NEPA requirement that way.

2 The question is should the CP be reinstated.
3 The question to time for doing the environmental review
4 is now at some in determining intermediate stage.

5 That's all I have. Thank you.

6 >> JUDGE BOLLWERK: All right. Anything
7 further JUDGE BARATTA?

8 JUDGE BARATTA: No.

9 >> JUDGE BOLLWERK: Judge Sager?

10 At this point, it is ABOUT 10:30. Why don't
11 we go ahead and take a break at this point.

12 I don't know if Mr. Dougherty, is ten minutes
13 enough for you, if you have to move around.

14 >> MR DOUGHERTY: Just as long as it is not a
15 long line at the men's room.

16 >> JUDGE BOLLWERK: That I can't speak to but
17 let's take ten minutes and if that's not working, we
18 will come back and see what we need to do. But at this
19 point, let's take a ten minute break.

20 Thank you.

21 (Whereupon, a ten minute break was taken)

22 >> JUDGE BOLLWERK: Are you ready Judge Sager?

23 >> JUDGE SAGER: Yes, I'm ready. 66

24 >> JUDGE BOLLWERK: Let's go back on the
25 record, please.

1 We have had a brief break and I think we're
2 ready now to talk about contention 4.

3 I should just mention, we will see how we're
4 doing in terms of time with Contention, 4 and 5 and
5 decide whether we -- when and if we need to take a lunch
6 break at that time.

7 Let's at least try to get those in.

8 So Contention 4 deals with plant site geologic
9 issues not adequately addressed.

10 And again, I think before I told you, you want
11 to leave it five and five, the same way.

12 >> MR. DOUGHERTY: Thank you. For the most
13 part we believe the materials we filed and supporting
14 affidavit, Dr. Gunderson speaks are for themselves.

15 I want to reemphasize that we are not trying
16 to reopen issues decided in is 1974 but to the extent
17 issues have arisen or the underlying facts have changed,
18 we think that those issues should be fair game for
19 adjudication. And one of those is the question of
20 seismic integrity.

21 In the last 35 years, there has been lots of
22 changes in the seismic landscape of this site and we
23 pointed to documents attesting to that. And our exper~~67~~
24 Henderson points out that some 20 earthquakes have
25 occurred since 1974.

1 So we think that's one of the issues that
2 should be brought into play here. And the dissenting
3 opinion of the whistle blowers statement Jesse Williams,
4 pointed specifically and said that a lot of the
5 determinations made back in the 70's has since been
6 shown to be incorrect. And so it is his view that cite
7 cert ability is an open question right now and should be
8 evaluated by the NRC.

9 So that is the context that we are trying to
10 get admitted at this time.

11 >> JUDGE BOLLWERK All right. Again, EIS
12 guess we have raised the question about the 2206
13 petition and operating license.

14 Do you want to say anything about those
15 remedies?

16 >> MR. DOUGHERTY: I think the OL is beyond
17 the plant horizon. I don't know when that will happen,
18 could be five years from now. What we are talking about
19 is decisions and the necessary reviews that those go
20 into that.

21 We have not actually talked about whether 2206
22 is a more appropriate vehicle and I don't really have an
23 opinion on that but seems like we are here to raise 68
24 questions, we've done that, supported it with expert
25 documents and maybe I just need to be shown why 2206

1 would be a more appropriate vehicle for raising that
2 kind of issue or perhaps some other venue to have that
3 conversation.

4 >> JUDGE BOLLWERK: All right, Judge Baratta,
5 do you have anything?

6 >> JUDGE BARATTA: If you look at the
7 regulations, it appears that there is an opportunity
8 when they go for the operating license to raise those
9 issues. It looks as if the regulations are structured
10 so that's exactly what is supposed to be done. And I
11 don't understand what your issue is with that?

12 >> MR. DOUGHERTY: If it is determined at
13 that stage, either the site is inappropriate because
14 there is a seismic criteria or conditions, or that
15 seismic considerations require plant design, thicker
16 walls, whatever, the time for making those decisions is
17 now rather than after the plant is constructed.

18 After you have made a irreversible commitment
19 of resources and there is not much you can do except
20 perhaps go back and add more addendum or something, .

21 >> JUDGE BARATTA: Well, that's the risk that
22 TVA takes. That's not something that if they decide to
23 go forward and it turns out that there is an issue as
24 you pointed out, that's their problem.

25 >>. MR. DOUGHERTY: You're the judge, not me

1 but I understand the position of the NRC is to make
2 decisions about site cert ability and risk to public
3 health and safety and not to defer to TVA.

4 >> JUDGE BARATTA: Don't the regulations
5 provide for that decision to be made when the operating
6 license is put forward?

7 >> MR. DOUGHERTY: Well, yes but we say if
8 they must be made when the CP was issued --

9 >> JUDGE BARATTA: The CPI was issued 230 year
10 ago and.

11 >> Mr. Dougherty: Those decisions were flawed
12 and should be reopened. But what we're saying is that
13 since then, new information has arisen that sheds a new
14 light on that whole question and if the Commission is
15 going to decide anew, the resumption construction
16 should consider seismic as part of that information.

17 >> JUDGE BARATTA: Regardless of that new
18 information, the fact that there are earthquakes in the
19 area is not new information.

20 It has been earthquakes and recognized even in
21 the original ER. So what?

22 >> MR. DOUGHERTY: I'm sure they have
23 earthquakes lots of places but our expert, Henderson ~~70~~
24 Mr. Williams and staff have both expressed the point of
25 view that the site has not been determined to be

1 suitable for these reasons.

2 So we think that is a fair issue for
3 adjudication in these proceedings. I don't intend to
4 have all the answers right now.

5 >> JUDGE BOLLWERK: Anything further Judge
6 Baratta.

7 >> JUDGE BARATTA: Nothing.

8 >> JUDGE BOLLWERK: Judge Sager?

9 >> JUDGE SAGER: Nothing here.

10 >> JUDGE BOLLWERK: We'll turn to Tennessee
11 Valley Authority.

12 >> MS. SUTTON: Yes, Your Honor. The fourth
13 proposed contention is inadmissible for several
14 reasons. First, contrary to 2.309 (f) 13, proposed
15 Contention 4 and the supporting Gunderson affidavit
16 clearly fall outside the limited scope of this good
17 cause proceedings. Why? Because they seek to challenge
18 TVA's compliance with NRC geologic and seismic siting
19 criteria and have nothing to do with TVA asserted reason
20 that show good cause, justification for the
21 reinstatement of the CPs.

22 As the Commission made quite clear in its
23 January 7th decision regarding its statutory authority
24 to reinstate CPs, this proceeding does not entail the
25 issuance of new PCs. Moreover, it clearly stated that

1 the purpose of this proceeding is not to engage in an
2 unbridled inquiry into the safety and enviromental
3 aspects or reactor construction and operation.

4 But proposed Contention 4 seeks to engage in
5 exactly the sort of inquiry expressly concluded by the
6 Commission.

7 It's important to note that the NRC evaluated
8 TVA's compliance with siting criteria at the time of
9 initial CP issuance and found the site suitable from a
10 geologic and seismic standpoint.

11 Through this proposed contention, petitioners
12 improperly seek to revisit plant siting issues related
13 to the initial permitting of the facility and unrelated
14 to TVA's demonstration for good cause and reinstatement
15 of the CP.

16 Second, proposed Contention 4 is inadmissible
17 for the further reason that it failed to present a
18 concrete and genuine dispute appropriate for litigation
19 contrary to 2.309 (f) 1, 4 & 6.

20 In this regard, Petitioners incorrectly
21 assumed that the reinstatement of the CPs authorizes a
22 new, the construction of the reactors. This has been a
23 repeated theme throughout their pleadings and argumen⁷²
24 here today.

25 Even if reactivated, a CP only constitutes an

1 authorization to resume construction, it does not
2 constitute NRC approval of the safety of any plant
3 design feature. The Commission will not issue a license
4 authorizing operation of Bellefonte Unit 1 or 2 until
5 first, TVA has submitted by amendment to its OL
6 application, the complete FSAR and second, the
7 Commission has approved the final plant design and
8 consistent with that design.

9 These requirements and procedures ensure that
10 Bellefonte Units 1 and 2 if completed and licensed to
11 comply with applicable NRC requirements including to
12 ensure safe operation of the plants during seismic
13 events. Further, the Commission recently noted in
14 CLI-1006, that should TVA apply for an operating
15 license, there will a future hearing opportunity on
16 that application. And that is CLI-1006 slip opinion at
17 14.

18 This goes directly to the question posed by
19 this Board on page 7 of your February 18 memorandum and
20 order.

21 That is whether or not the issue posed and
22 more appropriate for consideration in Part 50 operating
23 license proceeding. 73

24 The answer with respect to petitioners fourth
25 contention is clearly yes.

1 Petitioners really are trying to argue that
2 reinstatement of the CPs defactor equates to operating
3 license permitting actions and therefore, trying to
4 collapse those operating license consideration into this
5 very narrow reinstatement proceeding which is just
6 inappropriate.

7 So in the future, with respect to this
8 proposed contention, it should be raised in any future
9 potential operating license proceeding, again, assuming
10 that such a future proposed contention fully meets the
11 admissibility requirements of Section 2.309 which the
12 present contention 4 does not. And to that final
13 forage, I would like to add that the contention is
14 inadmissible for the additional reason that it fails to
15 sufficiently particularized in supported challenge.
16 Petitioner provide no support in the form of
17 documentation or expert opinion for their generalized
18 claims regarding potential earthquake damage.

19 They do not explain why or how the occurrence
20 of such events precludes TVA's comply with seismic
21 criteria or design requirements and such vague and
22 unsubstantiated allegations does not satisfy 2.309 (f)
23 F1, 5 and 6. 74

24 For all of these reasons, Your Honors, the
25 proposed Contention 4 should be rejected.

1 >> JUDGE BOLLWERK: Why aren't the concerns of
2 Mr. Williams raise adequate to support the contention?

3 >> MS.SUTTON: The concerns that have been
4 raised Your Honor are not extraordinary. They are NRC
5 processes to deal with such concerns.

6 At the end of the day , the NRC staff will
7 nevertheless do a complete review and evaluation and
8 those concerns should not -- do not in any way supercede
9 the NRC staff review otherwise.

10 >> JUDGE BOLLWERK: The basic thrust of your
11 argue is the OL process is the one in which this can be
12 raised?

13 >> MS. SUTTON: Yes, Your Honor. And CLI-
14 1006 clearly anticipated that these sorts of argument
15 may attempted to be raised but they are not proper for
16 these proceeding which is very narrowly focused on the
17 reinstatement.

18 >> JUDGE BOLLWERK: Do you agree with the
19 general tenor of Judge Baratta comments that you are
20 sort of taking this at your own risk, that if it turns
21 out additional work need to be done, designs have to be
22 changed, tenants have to be added, whatever problems
23 there are, that TVA is in the position they will have⁷⁵
24 to either fix it or let it go?

25 >> MS. SUTTON: They will have to fix it or

1 let it go.

2 >> JUDGE BARATTA: Should that enter into the
3 business decision associated with good cause?

4 >> MS. SUTTON: No, Your Honor. The State
5 agrees that TVA presented did not include seismic
6 considerations. So for purposes of this proceedings,
7 the answer is no. And moreover, that is a technical
8 issue as opposed to a business issue and fully
9 considered by the NRC staff.

10 >> JUDGE BARATTA: Does it not go to the cost
11 of finishing the facility which goes to those factors
12 you raised in the letter.

13 >> MS. SUTTON; It is the current TVA position
14 that it is seismically adequate so Your Honor, we do
15 not believe it is inadequate and request reinstatement.

16 >> JUDGE BOLLWERK: Judge Sager, do you have
17 anything?

18 >> JUDGE SAGER: Yes, thank you.

19 My question is that I think you said that
20 there are two steps, first that the Commission would
21 approve the plant design and then, there would be an
22 operating license approval step.

23 But if that's the case, how does the 76
24 Commission evaluate the plant design if the EIS and FSAR
25 have not been updated?

1 >> MS. SUTTON: As parts of the OL
2 application, they would be updated and that is the basis
3 upon which the Commission would make an ultimate
4 decision.

5 >> JUDGE SAGER: Okay, thank you.

6 >> JUDGE BOLLWERK: I think you said a couple
7 of time that TVA would amend its operating license
8 application.

9 TVA did file an operating license application
10 a number of years ago and was never acted upon. Nothing
11 ever went forward. So I take it your position is if I'm
12 understanding you're saying is that operating license
13 application is still pending with the agency?

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

15 >> JUDGE BOLLWERK: So anything you do is
16 amending that application?

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

18 >> JUDGE BOLLWERK: So you're not going to
19 file a new application?

20 >> MS. SUTTON: That is not our anticipated
21 course of action.

22 >> JUDGE BOLLWERK: One other question to
23 clarify. You mentioned earlier, this goes back to the
24 question of the environmental side: Did you all do an
25 environmental assessment relative to the CP

1 reinstatement?

2 That letter that you out in, do you consider
3 that to be environment assessment or did you do
4 anything or that letter basically is the sum and
5 substance of the analysis that you did?

6 >> MR. VIGLUICCI: Judge Bollwerk, TVA did an
7 environmental assessment in addition to and before it
8 sent in its letter to the NRC requesting reinstatement.

9 So there is a separate issue by the TVA for
10 its decision to seek reinstatement.

11 >> JUDGE BOLLWERK: All right, was that made
12 available -- is that in the record anywhere?

13 Was it made available to staff? Staff is not
14 in their hands. So it is in Adams somewhere,. I take
15 it.

16 >> MR. ROTH: David Roth for staff. Yes, Your
17 Honor.

18 >> JUDGE BOLLWERK: All right.

19 >> JUDGE BARATTA: You would not happen to
20 have the number would you.

21 >> MS. BOOTE: I'm looking for that right now.

22 >> JUDGE BOLLWERK: Judge Sager, anything
23 further? 78

24 >> JUDGE SAGER: Nothing further.

25 >> JUDGE BOLLWERK: Anything -- let me turn to

1 Staff then.

2 >> MR. ROTH: David Roth for the Staff. A
3 followup to the previous question, TVA provided in the
4 staff's response to the RAI. We provided you a number
5 but that's currently will provide the number but that is
6 currently, available in Adams and publicly available for
7 some time.

8 Basically, there is not much additional to
9 add.

10 What counsel for TVA has stated is correctly
11 captures the review process and correctly captures the
12 Staff's position on this.

13 This new information whether raised by
14 Petitioners, whether raised by U.S. GS, whether raised
15 by inspection team for TVA, if there is new information
16 that may affect the operating license final safety and
17 plant after its completed, then that will have to be
18 updated in the license application.

19 But in the narrow scope of good cause
20 proceeding, whether the finally as built design has
21 sufficient addresses any new information on earthquake
22 is not part of the reinstatement good cause.

23 >> : JUDGE BOLLWERK would you like to respond
24 to Judge Baratta's point about the question he raised
25 raised about the potential cost that could be entailed

1 if there is additional seismic work has to be done, why
2 don't that go to the question of good cause as framed by
3 TVA in terms of the analysis assessment?

4 >> Mr. Roth: That would not go to the
5 contention admissibility for the good cause in part
6 because as TVA is doing in their pleading, there is
7 really no information speculation that there might be an
8 earthquake.

9 It is such speculation that the earthquake
10 might have an impact.

11 It does not go directly to anything saying
12 that TVA now has a for example, a cost prohibitive issue
13 because they can't fix equipment X to make a size
14 likely qualified.

15 So even if one were broadly to view it as good
16 cause, nevertheless, it is still insufficient to meet t
17 that standard.

18 >> JUDGE BOLLWERK: Would you like to say
19 anything about the adequacy of Mr. Williams' information
20 relative to the admissibility of this contention, given
21 he is a NRC staff employee?

22 >> MR. ROTH: We have a robust process that
23 addresses the employee concerns. The Chairman himself
24 alluded with pleasure the fact that Mr. William was able
25 to bring these issues forward. As far as other

1 petitioners have brought this information before you
2 today, staff believe they have already adequately,
3 addressed the question and will not say anything further
4 on that.

5 >> JUDGE BOLLWERK: Judge Baratta.

6 >> JUDGE BARATTA: No questions at this time.

7 >> JUDGE BOLLWERK: Judge Sager.

8 >> Judge Sager. Nothing further.

9 >> JUDGE BOLLWERK: Let's turn back to
10 Mr. Dougherty. Mr. Dougherty.

11 >> MR. DOUGHERTY: Thank you Your Honor. Of
12 course, TVA and Staff argue about this contention as
13 they argue about every contention that's outside of
14 scope. It's Been defined by the Commission, scope
15 being good cause. TVA staff argued that scope has been
16 expressly set up been by the complex certainly not
17 express because we don't know what the scope is good
18 cause standard is.

19 According to Staff's counsel, I guess good
20 cause mean a valid business decision, if you boil it
21 down, it's simply a question of whether this makes
22 good business sense for TVA.

23 We see this Board's duty as being broader than
24 that not just to make sure that TVA is making good
25 business choice but fully compensate and security is

1 being protected.

2 In that vein, I was struck to hear TVA's
3 counsel comment that in response to your question Judge
4 Baratta, that the end of construction process they were
5 discovering that there was seismic issues perhaps
6 requiring plant redesign and that they would either fix
7 it or let it go.

8 I don't know what that means but, we expect
9 it to be fixed and we think the time to fix it is before
10 it's built and now is the time to consider whether it
11 needs to be fixed, not after it is complete. And that
12 concludes my rebuttal.

13 >> JUDGE BOLLWERK: let it go term is
14 probably line, what I plane is not operative, if it does
15 not plants the seismic requirement.ACT

16 >> MR. DOUGHERTY: I see, any other tribunal
17 is going to say, well, you spent ten billion and it's
18 been issues so we are just going to shut it down.

19 You have a -- did you ever hear of Midland.

20 >> We think it's unlikely, not theoretically,
21 impossible but and we don't that's the Atomic Energy ACT
22 or NEPA will take that approach.

23 We think the role of the NRC is to get ahead
24 of the SQUISH resolve them before.

25 >> JUDGE BOLLWERK: I'm hearing remnants of

1 the debate that went on over the old licensing process,
2 the two step licensing process verses the COL process
3 which was just to avoid these sorts of issues. But this
4 case is under the old process, at least up to this
5 point.

6 >> JUDGE BARATTA: Can I ask a question of the
7 TVA safety behaviors? Under what conditions would TVA
8 have to submit an amendment to the existing OL or would
9 they actually have to submit a whole new OL? Under the
10 assumption you decide to go with construction?

11 MS. SUTTON: Under assumption you go forward
12 is under the 120 day letter process that we are going
13 to describe with any number of requirements that we
14 identify new regulatory requirements. For example,
15 that's a right line test if you will, and has arisen
16 since the original OL was submitted. We would have have
17 to amend the OL to address any new regulatory
18 requirements.

19 That is an example Judge Baratta where we
20 would be doing that.

21 >> JUDGE BARATTA: so to meet the deferred
22 plant status policy.

23 >> MS. SUTTON: That process helps us identify
24 what would hypothetically be necessary as well as other
25 regulatory requirements although the deferred plant

1 policy State is not itself a regulation. It does help
2 guide us to determine what potentially would have to be
3 done to the pending OL application. By way of
4 amendment.

5 >> JUDGE BARATTA: Question for the staff
6 then. Assuming that they go forward with construction
7 with the plant and as far as that 120 day notice, they
8 do not identify seismic as an issue that needs to be
9 raised in the amended OL. There are provisions in part
10 504 looking at seismic issues of plants considered after
11 a certain date, I don't know what the date is, maybe
12 1980 something, what would the staff -- how would the
13 staff determine whether or not that was adequate?

14 >> MR. ROTH: In terms of adequacy from a
15 technical review, the staff has substantial experience
16 in reviewing seismic issues and certainly, staff is
17 aware of the particular issue here.

18 While I can't speak to exactly what the
19 staff's finally review process will be, the staff will
20 undoubtedly consider new earthquakes information to
21 determine whether the new earthquakes are bounded by
22 previous analyses or whether the analysis need to be
23 redone. 84

24 >> JUDGE BARATTA: So in other words, even if
25 that were not part of the specifics in that letter, if

1 the Intervenor were to come in and say the original
2 would not consider that, only consider X and not Y, that
3 would be an issue that could be used assuming it was
4 proper?

5 >> MR. ROTH: That is correct. One avenue
6 someone could take the scheduling order, there are other
7 avenues including 2206 to have such an issue raised.

8 >> JUDGE BARATTA: Thank you.

9 >> JUDGE BOLLWERK.

10 >> MR. ROTH: Pardon me, we also have what
11 you were looking for.

12

13 That's Mike Lema 082730756.

14 >> JUDGE BOLLWERK: Judge Sager, anything you
15 want to say at this point?

16 >> JUDGE SAGER: No.

17 >> JUDGE BOLLWERK: Mr. Dougherty, let me turn
18 back to you.

19 >> MR. DOUGHERTY: Nothing further.

20 >> JUDGE BOLLWERK: I believe that concludes
21 our discussion about Contention 4. Let's then move on
22 to Contention 5. This one's called lack of good cause
23 for reinstatement. And the essence of this one dealt
24 with financial matters or questions of cost.

25 This one, we had set aside because there is

1 also a motion both motion to supplement the record as
2 well as a motion to strike that were involved.

3 We were given 20 minutes aside for these --
4 for this particular argument. Mr. Dougherty, how do you
5 want to divide your time?

6 >> MR. DOUGHERTY: Ten and ten, please.

7 >> Judge Bollwerk: All right. Whenever
8 you're ready.

9 >> MR. DOUGHERTY: With all due respect to
10 my colleague, Mr. Zeller, I think it probably did not
11 mean in the most helpful way possible since there is all
12 these questions about whether there is good cause for
13 all of these contentions. What this contention goes to
14 is the fact that alternative sources of power would be
15 environmentally preferable to nuclear power and less
16 expensive and are on the table. And those have to be
17 evaluated in the context of this proposed CP
18 reinstatement.

19 And we congratulate TVA for taking a very
20 public approach and re-evaluating their needs and with
21 ways of addressing demand.

22 And the integrated resource plan that was
23 circulated last summer, this is subject of our amends⁸⁶
24 basis.

25 They suggest that we are really putting

1 everything on the table, we don't know if any one of
2 these four plants or and we are looking at hydro, solar
3 and wind, we think that is the right way to do it in
4 conjunction with the NEPA process and done pretty much
5 the same thing with their decision, whether to resume
6 construction at Bellefonte 1 and 2 affect the NEPA
7 process as it should be.

8 We think the NRC as required by law and good
9 policy should be taking the same steps. All of these
10 things should be on the table. And may well be that TVA
11 will decide that we don't need to build this plant given
12 the nuclear power now is costing what it is, 10 or 11
13 cents per kilowatt hour , and advances in technology and
14 changes in technology that we can turn to wind or solar
15 power.

16 If they do that, obviously, the environmental
17 advantages so we are saying that all these things must
18 be evaluated at the same time and a fair adjudication of
19 this case.

20 We think that the integrated resource plan
21 just should be part of the record. If our motion to add
22 it as a supplemental basis is denied, then, I think this
23 panel has the power to take judicial notice of it. 87

24 It is in the Federal Register. We are not
25 trying to pull a fast one here. We are just making a

1 point that TVA is very publicly re-evaluating all its
2 energy options and NRC staff may decide that the more
3 cost effective going about this than building plants
4 that have been sitting there for 25 years. That is the
5 sum and substance is the basis of our contention.

6 >> JUDGE BOLLWERK. All right, Judge Baratta?

7 >> JUDGE BARATTA: I'll come back.

8 >> JUDGE BOLLWERK: Okay.

9 I guess one of the -- you have attempted to
10 define this fairly broadly in terms of alternative
11 energy sources. TVA had information in its original
12 letter and which staff also looked at and discussed in
13 their safety evaluation that and maybe the environmental
14 system as well, questions about cost per kilowatt of
15 installed capacity.

16 That is not something you really addressed in
17 this contention. You didn't directly take on the TVA
18 assertion about installed -- the cost of installed
19 capacity per kilowatt hour?

20 >> MR. DOUGHERTY: That was our intent. Our
21 intent if you take an overall look at the final
22 delivered cost of electricity from these reactors and
23 compare it to the final delivered cost from alternative
24 sources, the reinstatement reconstruction option is more
25 expensive than environmentally. Or, and this is based

1 in part on the material that we submitted in the 3, 4
2 combined license proceeding for Bellefonte 3 and 4 in
3 which our expert, Dr. Makhijani submitted statements
4 explaining why it's cheaper for both 3 did 4 and 1 and
5 2.

6 >> JUDGE BARATTA: You're comparing apples and
7 oranges because you're comparing a plant at one time
8 that was upward of 80 percent complete and based on
9 1978 dollars with plants being built with 2010-dollars
10 which it's not going to cost that to build that plant.

11 I saw what he had there and the cost numbers,
12 they are just irrelevant.

13 >> MR. DOUGHERTY: Then, maybe your opinion
14 judge, you may be right. I can't go the merits of what
15 he is claiming.

16 I don't think you can assume that since one of
17 these plants is 78 percent and the other is 58 percent
18 complete that the cost of completing construction is
19 simply going to be 22 or 42 percent more respectively
20 for a lot of reasons. One is A, they have been inside
21 these plants chopping them up so who the heck knows
22 what needs to be done to complete construction. And
23 that could be a nightmare of emerging and financial 89
24 challenges. Secondly, plants have been sitting there
25 for 20 years so there is no way of knowing. And

1 finally, that is a very unusual reactor design, Wilcox 2
2 and 5. There are a lot of uncertainties that should go
3 into any calculation of cost.

4 Beyond that, I'm at the limit of my ten here
5 but we do think for all these reasons, there is an issue
6 that should be considered admissible.

7 >> JUDGE BOLLWERK: Anything further.

8 Judge Sager?

9 >> JUDGE SAGER: As I understand it, what
10 you're saying is you're happy with the procedure that
11 TVA is taking a look at all the resources. And you
12 heard that all the operating stages will all be reviewed
13 any way and would lead to TVA responsibility.

14 So what is the compelling argument to do this
15 right now?

16 >> MR. DOUGHERTY: Well, we are saying just
17 the opposite. We don't know if it's TVA's
18 responsibility or not, but they are doing it. We think
19 it is a rational way to approach their energy. On the
20 other hand, we do believe that the NRC is required to do
21 it. This is part of any NEPA review and part of the
22 general reactor review criteria is to evaluate the
23 alternative sources. So it's actually just the 90
24 opposite. TVA is not required to do this and NRC is.

25 >>JUDGE SAGER: Okay, thank you.

1 >> JUDGE BOLLWERK: Did the TVA process a
2 public process?

3 You have an input into it or is it something
4 jTVA is doing internally --

5 >> MR. DOUGHERTY: Well, if you asked me
6 yesterday, I would say public process, we see public
7 communications going on this morning.

8 I learned this morning, they done an
9 environmental assessment on CP reinstatement.

10 And I'm surprised. I guess it's in the system
11 somewhere. So I can't really speak for what is
12 happening behind closed doors but some of it is being
13 conducted in the open.

14 >> JUDGE BOLLWERK: We may have to talk to TVA
15 about that. What you just said raised a question for
16 me; with respect to environmental assessment where they
17 are looking at one plant, either one BMW AP1000, you
18 haven't filed comments I take it on that?

19 >> MR. DOUGHERTY: Just to get the right
20 term, this is the draft supplemental EIS?

21 >> JUDGE BOLLWERK: Correct.

22 > MR. DOUGHERTY: Yes. we have been involved
23 and submitted comments. 91

24 >> JUDGE BOLLWERK; I see. But the EA in
25 terms of reinstatement, you have in terms of the CP

1 that other environmental impact assessment that is going
2 on --

3 >> MR. DOUGHERTY: We had a hearing over the
4 winter and we had lots of our members down there.

5 >> JUDGE BOLLWERK: Anything further Judge
6 Baratta? Judge Sager?

7 >> Judge Sager: Nothing further they were.

8 >> JUDGE BOLLWERK: Then, turn to TVA, please.

9 >> MR. CHANDLER: My name is Lawrence
10 Chandler.

11 Once again, the focus of this contention has
12 morphed somewhat from what it started to be in the May
13 8th petition to something different, but candidly,
14 something that is more accurately reflects the substance
15 of those contentions itself.

16 The contention goes to alternatives, it goes
17 to cost, does not go at all to TVA showing of good
18 cause.

19 I think before I get further into discussion,
20 I think what Mr. Dougherty just explained makes very
21 clear that the process and documentation prepared by TVA
22 in connection with not only the instant reinstatement
23 request but generally in connection with its energy 92
24 development is a public process.

25 The documents are available, the public does

1 have an opportunity to fully participate in the
2 development of those documents and contribute to TVA's
3 thoughts in going forward on energy production.

4 The IRP is a good example.

5 The IRP is a process that TVA has embarked on
6 as part of a much larger program.

7 we think it meets its energy needs and it's
8 outside the scope of the NRC's licensing process and
9 it's certainly outside the narrow scope of the
10 reinstatement proceeding itself.

11 What we repeatedly hear, we heard yet once
12 again, that the NRC needs to put all of these things on
13 the table, and that's simply not the case.

14 This case is focused on TVA's statement for
15 good cause in this proceeding.

16 This is not an opportunity to periodically
17 review health and safety issues, nor is it an
18 opportunity to periodically review the cost of this
19 facility or possible alternatives to it.

20 Opportunities for that to some extent present
21 themselves in the future should TVA proceed with its
22 operating license application and otherwise admissible
23 contentions as proffered in that regard. 93

24 But this is not simply the opportunity to do
25 that.

1 One of the points they make in their petition
2 is that at the end of the day, 1 and 2 is equally
3 obsolete before they come on line which they contend
4 weighs against good cause.

5 But again, as I mentioned a second ago, that
6 simply is not within the scope of this proceeding.

7 It does not raise a genuine dispute material
8 to any finding that must be made in this proceeding as
9 required by 10 CFR 2.309 (f) 1, 3, 4 or 5.

10 The reasons given by TVA for seeking
11 reinstatement were explained by Ms. Sutton earlier. To
12 basically reinstate them, TVA has asserted that there
13 are generally signs of increasing demand. TVA notes
14 that progress has been made in the construction of these
15 units which have a bearing on the overall cost of
16 production at the end of the day.

17 The existing investment makes it possible
18 that future costs of capacity would be lower than
19 construction. And that the possible future problems
20 with access components which could contribute to
21 increased cost of production by new facilities.

22 Overall, TVA explained in its August, 2008
23 request that reinstatement of the CPs was a necessary⁹⁴
24 precursor to subsequent determination of whether units
25 1 and 2 had potential options for base-load capacity.

1 And as I said before, at bottom, the Petitioners would
2 have this Board -- petitioners would have this Board do
3 exactly what it should not and that is superintend the
4 business judgments of the applicant. Commission made
5 quite clear that is not part of the process.

6 Petitioners focus on exclusively on cost
7 projections for alternative energy sources.

8 In the Bellefonte units, 3 and 4 environmental
9 report, this is not performed through dealing with costs
10 related to Bellefonte Units 3 and 4.

11 In fact, if you look at the nature of their
12 proposed contention, it is basically a repackage of
13 proposed contention, 16 in Bellefonte Unit 3 and 4
14 proceeding.

15 And I think Mr. Dougherty recognizes that. He
16 spent a great deal of time in connection with that
17 proceeding. While portions of that contention were
18 admitted, the aspects addressing various subjects that
19 they seek to raise here as I understand it were rejected
20 in that proceeding.

21 But left unexplained at the end of the day is
22 how this is material to any finding this Board must
23 make. 95

24 That is the Petitioner's burden and they have
25 not carried it. And for that reason, this contention

1 should be rejected.

2 In their reply, we note for the first time and
3 this is not something found in the initial petition.

4 They continued there is really no relevant
5 guidance on good cause. And I think we heard a great
6 deal of discussion earlier, there is not much I would
7 like to add at this point.

8 But the Commission has made abundantly clear
9 in many prior decisions, the scope of the CP extension
10 proceeding and likewise, reinstatement proceeding is
11 very narrowly focused on the good cause provided by the
12 applicant.

13 I would note that in prior instances, CP
14 extensions have been sought for a variety of reasons and
15 many based on economic judgment, others based on
16 technical issues which we require extension of the
17 construction periods originally proposed.

18 In fact, if you look at the history of the
19 Bellefonte Unit, 1 and 2, CP extension, they have also
20 been based on large financial judgment, based on
21 changes and need for power and cost projections that
22 have been made over time.

23 Despite the rhetoric, petitioners at the end⁹⁶
24 of the day, claim that simply the wrong standard is
25 being used here, that in fact the right standard for e

1 issuance of construction permits from the outset as if
2 they were holding new licensing actions.

3 Commission's decision in CLI 1006 makes clear
4 that is simply not the case. And for that reason,
5 should be rejected. The supplement they filed in July
6 of 2009 adds really nothing to that.

7 The fact that TVA, it is our position on
8 earlier on the IRP process for its greater need does not
9 change the scope of matters that is properly before this
10 agency.

11 In terms of our motion to strike that
12 supplemental information, I don't think there is any
13 further that need to be added to what we argued in that
14 motion so I will not dwell on that.

15 It is simply not relevant to TVA statement
16 of good cause in this proceeding. and I would point
17 out to answer the question the Board raised on page 7 of
18 its Order, we do believe that to the extent an
19 admissible contention can be framed, the operating
20 license proceeding would be an appropriate occasion for
21 such consideration should TVA ultimately decide to
22 pursue an operating license for these facilities.

23 >> JUDGE BARATTA: I was very confused about
24 why economic considerations are not part of the good
25 cause.

1 It seem as though, there are several points in
2 the TVA August 26, 2008 letter where it talks to those
3 types of issues.

4 >> MR. CHANDLER: The economic considerations
5 pose are good cause here are different from the
6 considerations that petitioners would bring to bear
7 here.

8 What they are trying to raise really are
9 issues related to cost compared to alternative
10 suggestions that alternatives are now more cost
11 efficient with the completion of construction of
12 Bellefonte 1 and 2.

13 That is not part of the good cause showing in
14 this case.

15 >> JUDGE BARATTA: But as part of their
16 pleading they raise, just the overall cost.

17 >> MR. CHANDLER: Right, and part of what TVA
18 is trying to do is reassess what those costs would be by
19 doing that. The cost of completion, not the relevant
20 cost of generating power.

21 >> JUDGE BARATTA:: Well, admittedly, they
22 argue that too. They also argue the --

23 >> MR. CHANDLER: That is not an issue 98
24 focused on reinstatement construction permits here. It
25 is an issue that to the extent it has any particular

1 relevance, in the context of an operating license.

2 >> JUDGE BARATTA: Your letter says a major
3 factor arriving change in power generation economics
4 since 2005. That seems to me to be opening the door at
5 this point for challenge of reinstatement of good cause.

6 >> Mr. Chandler: I think it continues beyond
7 that and those factors are not taken out I think by the
8 petitioners in their petition.

9 >> JUDGE BARATTA: The cost for kilowatt to
10 install capacity has continued to increase. So you
11 raise a number of the same issues raised by the
12 Intervenor. I'm looking at the second and third
13 paragraph on the August 26 letter and on --

14 >> JUDGE BOLLWERK: On page 5, I think if
15 we're looking at the same thing.

16 >> MR. CHANDLER: Bear with me one second.

17 >> JUDGE BARATTA: Take your time. Yes, page
18 five.

19 >> MR. CHANDLER: I'm sorry, you were
20 referring to since that decision was made?

21 >> JUDGE BARATTA: 2005, that was one.

22 And the preceding paragraph, actually, the
23 first full paragraph on the page, major factor is the
24 change in power generation, economics since 2005.

25 And it also mentions and later in the third

1 full paragraph, it discusses as a result of the
2 potential for low cost kilowatt.

3 It just seems like you're arguing the same
4 points.

5 >> MR. CHANDLER: I think Your Honor, the
6 response we are making on page 40, responds to points
7 you're making. We note that Petitioners seek to
8 directly challenge financial data -- -- I'm reading from
9 a prior pleading financial data and cost analysis for
10 nuclear power plants and alternative energy sources
11 contained in the BLM Unit 3 and 4 environmental report.

12 It is not related to 1 and 2. At the same
13 time, they completely ignored TVA stated reasons for
14 seeking reinstatement of the CPs for Bellefonte's unit 1
15 and 2. To determine whether Bellefonte units 1 and 2
16 should be regarded as potential base-load generating --
17 as a potential base-load generating option.

18 Consequently, petitioners again March 2000 order by
19 failing to squarely challenge or otherwise controvert
20 TVA's good cause justification as reinstatement of the
21 CP.

22 In other words, they are not challenging the
23 assertion that TVA has made as a basis for seeking 100
24 reinstatement for Units 1 and 2.

25 Rather, they are looking at cost data and

1 suggesting their cost data reflecting the units 3 and 4
2 combined operating license proceeding is a separate
3 proceeding in which instance, consideration of costs are
4 valid considerations for initial licensing of a facility
5 not, the broad question of cost -- not in the narrow
6 context of what costs or how this is a factor related to
7 reinstatement.

8 >> JUDGE BARATTA: What I'm trying to
9 determine is what constitutes good cause. It seems from
10 your letter that the potential for Bellefonte's unit 1
11 and 2 would be economically superior, is in fact a
12 consideration in going forward with reinstatement under
13 the good cause.

14 I'm not at all discussing what the Intervenor
15 has -- intervene for what put for the but trying to
16 determine what constitutes good cause.

17 It seems like your letter on the economic side
18 is something that goes into the fact of good cause
19 determination.

20 >> Mr. Chandler: It is a element of good
21 cause in a sense but what is missing conspicuously,
22 missing in our view is the basis for their suggestion
23 that the cost and considerations given by TVA for units
24 1 and 2 are wrong.

25 It's not just the subject matter necessarily

1 categorically excluded, but there are additional factors
2 that have to be addressed in connection with the
3 contention that they simply have not satisfied.

4 >> JUDGE BOLLWERK: The question about the
5 integrated resource plan, that process is ongoing, I
6 take it?

7 >> MR. CHANDLER: Yes.

8 >> JUDGE BOLLWERK: And you have a sense of
9 when it will be completed?

10 >> MR. CHANDLER: That I'll ask Mr. Vigluicci
11 to address.

12 >> MR. VIGLUICCI: Just a second.

13 >> JUDGE BOLLWERK: Surely.

14 >> MR. VIGLUICCI: I know we have not just
15 issued the draft version yet of the IRP.

16 I think later on this year, it is scheduled to
17 be released and I think there is at least a year period
18 for the issuance of a final IRP.

19 >> JUDGE BOLLWERK: Probably if I heard you
20 looking at the end of 2011, that draft at the end of
21 this year, final by the end of 2011 approximately.

22 >> MR. VIGLUICCI: Mid to late part of 2011.

23 >> JUDGE BOLLWERK: How would TVA propose¹⁰²
24 integrate whatever analysis, lessons learned,
25 information received from that process, back for

1 instance, the COL 3 and 4 proceeding? I mean , there
2 are a number of statements made obviously in the
3 environmental report you submitted that had statements
4 about costs and alternative energy sources.

5 >> MR. VIGLUICCI: I think we have to look at
6 what we came up with and then make a decision whether or
7 not that was significant information and we have to
8 update our COL application at that time.

9 >> JUDGE BOLLWERK: And I take it then that
10 would be integrated as well into the operating license
11 application in this case?

12 >> MR. VIGLUICCI: That's correct.

13 >> JUDGE BOLLWERK: More direct question with
14 respect to supplementing a contention: What's the
15 proper process here? If something comes up in there
16 they want to add, what should they do?

17 >> MR. CHANDLER: As we pointed out in our
18 motion to strike, that should have been accompanied by a
19 motion. There is not just simply an unbridled
20 opportunity to continuously supplement the petition to
21 intervene when something strikes a petitioner as
22 warranting introduction. It is a process for doing so.

23 They failed to follow that process and for¹⁰³
24 that reason, should be stricken.

25 Beyond that, we note that it's also flawed in

1 that it really has no direct bearing on it and a good
2 cause showing that's required in the context of
3 construction permit reinstatement proceedings such as
4 this.

5 >> JUDGE BOLLWERK: The direct question is
6 they did make a direct attempt to address the issues in
7 2.309 and go with supplementation or amending or filing
8 a new contention.

9 >> MR. CHANDLER: I think they lip serviced,
10 but I don't think they subsequently addressed the
11 requirements of that.

12 >> JUDGE BOLLWERK: Your point more directly
13 is that there should have been a motion rather than
14 document supplementation?

15 >> MR. CHANDLER: I think they needed to seek
16 leave to supplement, that's correct and they failed to
17 do so.

18 >> JUDGE BOLLWERK: All right. Judge Baratta,
19 any other questions?

20 >> MR. CHANDLER: If I may, we did fully
21 respond to the proposed contention as supplemented in
22 our Answer that was filed on January 29th.

23 >> JUDGE BOLLWERK: All right, thank you. 104
24 Judge Sager?

25 >> JUDGE SAGER: Nothing here.

1 >> Judge Bollwerk: All right. Let's turn
2 then to the NRC staff.

3 >> MR. ROTH: David Roth for the staff.

4 In general, Contention 5 in its effort to
5 attack good cause is the staff would pledge is hardly
6 toward the Units 3 and 4, rather than towards the stated
7 reasons for Units 1 and 2.

8 On that, with regard to how Units 3 and 4 cost
9 estimates played into units 1 and 2 reinstatements
10 economic considerations, it appears that TVA safety
11 behaviors and intervenor are in agreement and TVA
12 request to reinstatement.

13 Was considered the changes that have taken
14 place.

15 Further, I think everybody understands what
16 happens at the operating license stage.

17 Petitioners state that NRC is required to
18 review the NEPA power and energy alternatives and
19 operating license required to review it, the standards
20 and staff just filed brief on this in Watts Bar
21 proceeding and SACE is proceedings as is TVA. But
22 the standards at the operating license stage do not
23 require the environmental report nor the staff's EIS¹⁰⁵
24 include a need for alternative analysis.

25 Commissioner Jaczko noted this in page five of

1 his Commission voting record actually so nobody claimed
2 to be surprised by this information.

3 Should at the EIS stage, somebody wish to
4 bring forward a need for power or alternative analysis
5 issue, then through Commission case law, there is a
6 five part -- pardon me, a three part test they have to
7 show that the plant fit is proposed and it's already
8 substantially, constructed at this point, would not be
9 used to meet energy demands or would not be used to
10 replace existing or less cost- effective power. And
11 last, also the plant being proposed would not presently
12 exist a viable energy alternative to the plant being
13 proposed that would serve the area and -- service area.

14 And that's to get a waiver request to bring
15 that issue into the proceeding.

16 Otherwise, pursuant to 51 95(b), staff's EIS
17 will not continue the discussion of energy alternatives
18 or for power.

19 Likewise, in this narrow scope proceeding of
20 good cause, the staff is not required by any amount of
21 regulation to include or address the issues of need for
22 power. Correspondently, it's not part of the good
23 cause consideration at the discussions of Uits 3 and 106
24 and its information for good cause.

25 >> JUDGE BOLLWERK: All right, Judge Baratta,

1 anything?

2 >> JUDGE BOLLWERK: Judge Sager?

3 >> Judge Sager. I have a couple of questions.

4 You mentioned that staff apparently is not
5 going to be going into alternative need for power in an
6 operating license case for Units 1 and 2.

7 So I take it whatever then came out of the IRP
8 would or wouldn't be integrated into your analysis in
9 some way?

10 >> MR. ROTH: That would be generally
11 correct. We would have to see what exactly what it is,
12 the absence and the condition, direction of the
13 contrary. The staff's EIS does not contain need for
14 energy discussion.

15 >> JUDGE BOLLWERK: That's under Part 50
16 license, right? No, Part 52 is a different matter is,
17 that correct?

18 >> MR. ROTH: Correct, this is relevant to the
19 environmental reviews associated with Part 52 license.

20 >> JUDGE BOLLWERK: So when the IRP comes
21 out, that may have an impact relative to what the
22 staff is doing in connection with Units 3 and 4?

23 >> MR. ROTH: That may be true, Your Honor. 107

24 >> : JUDGE BOLLWERK: What's the staff
25 position relative to the proper way for Petitioner to

1 amend their intervention petition to raise additional
2 information to put something before the Board.

3 >> MR. ROTH: Well, it was a unusual
4 situation. It was a lengthy period of time between the
5 initial pleading during which time the Commission stated
6 that there should be no further filings on these
7 matters. Thus, for this particular one, it's arguable
8 improper for them to file additional issues.

9 >> JUDGE BOLLWERK: Well, from their
10 perspective, they were not putting out additional
11 issues, they were putting out additional information to
12 support an issue they had already framed.

13 On that question of timing, are you telling
14 me it is a question of timing because the Commission
15 said everything is on hold?

16 >> MR. ROTH: Yes, Your Honor.

17 >> JUDGE BOLLWERK: So if that hold hadn't
18 been in place, what would have been the proper way to do
19 this from your perspective?

20 >> MR. ROTH: Your Honor, if the hold had
21 not been in place, they would have to meet the standards
22 for many of the contentions in the 309 where the
23 standards for initial filings in case somebody with
24 initial party status which at this point, did not
25 achieve party status.

1 >> JUDGE BOLLWERK: And do they need a
2 motion or can they just file a document that would
3 discuss the standards and call -- the pleadings say it
4 is a supplement?

5 >> MR. ROTH: The fact is, in different
6 proceedings has been done differently by petitioners but
7 generally, has to get leave from Your Honors to file a
8 motion as well as the initial filing.

9 >> JUDGE BOLLWERK: All right. Anything
10 further Judge Baratta?

11 >>> JUDGE BARATTA: Nothing further.

12 >> JUDGE BOLLWERK: Judge Sager?

13 >> JUDGE SAGER: Nothing further.

14 >> JUDGE BOLLWERK: Let me then turn back to
15 joint petitioners.

16 >> MR. DOUGHERTY: Thank you Judge Bollwerk.

17 Let me first take on the question of
18 supplemental basis. People say that these licensing
19 proceedings are costly and labor intensive, and boy,
20 there is no better example than this. We just had a
21 one-and-a-half page federal register notice to send it
22 in to make sure it's on the record. And what that
23 produces is just a blizzard of motions to strike and 109
24 challenges. Counsel for TVA said, we agree with that,
25 that every one knows about it and as I said before, I

1 think it's well within the authority to take judicial
2 notice if anything from the federal register.

3 So, I'm just disinclined to continue to
4 fight over this. Now, I was fascinated to hear that
5 good cause as considered by TVA does not involve matters
6 related to TVA business judgment.

7 We agree with that. Good cause must mean
8 something else. Certainly, we're not here to review
9 TVA's business decisions. We don't have expertise in
10 that.

11 But I think what this really demonstrates, we
12 are all at sea here trying to figure out what the
13 Commission sent us off to do and that question need to
14 be resolved as a threshold matter. I think the way for
15 to us to really characterize our claim here is that TVA
16 has no idea what it 's going to do. That is a good
17 thing.

18 There are a lot of choices. There's a lot
19 of cost in the environmental impact associated with this
20 choice. And It's going back to the drawing board
21 saying what are we going to do? Are we going to vote
22 one or four or something in between, or zero.

23 Are we going to wind? Are we going to go ~~110~~
24 Solar. We're going to figure this out. And what the
25 associated panel did in 3, 4 proceedings said, when you

1 guys figure that out, come back to us and we will start
2 to litigate this case. But in the meantime, things are
3 so uncertain that we don't have anything to focus on.

4 And I think if it makes sense to put the 3, 4
5 proceeding on hold, then I don't know how we reach a
6 have different result here.

7 Now, the way to characterize our contention is
8 that all of these alternatives must be evaluated by
9 staff. Certainly being evaluated by TVA and we didn't
10 think it would be appropriate for this Board to say,
11 none of these questions are relevant, and yes, we are
12 going to affirm reinstatement of the CPs.

13 At a minimum, these issues actually formed a
14 good reason to postpone adjudication of these questions
15 until the applicant figures out what the heck they want
16 to do. That concludes my rebuttal.

17 >> JUDGE BOLLWERK: All right. Judge Baratta?

18 >> JUDGE BARATTA: You've heard the claim
19 made that your basis for this contention really used
20 information that's not germane, namely, the cost of
21 Units 3 and 4.

22 Do you care to respond?

23 >> MR. DOUGHERTY: Yes, we cited in our papers
24 other materials outside the scope of Dr. Makhijani's
25 affidavit including the Keystone documents, a fairly new

1 study of cost of nuclear power. And we intend to find
2 other information to present to the panel.

3 But it's more than just 3 and 4. As I said
4 before, no one know and I don't think any one has
5 alleged how much it's going to cost to complete
6 construction of Units 1 and 2. That's probably born by
7 more uncertainty than 3 and 4 even though they are in
8 large measure completed, because in large measure, they
9 been deconstructed and the whole idea of trying to
10 resume construction on the plant after it been rusting
11 away for 20 years, no one knows. And that's part of
12 the equation here; how much will wind cost? How much
13 will solar cost, and how much is it going to cost to
14 reinstate, -- to resume construction of these two units?

15 You can't consider those questions without
16 putting everything on the table at the same time.

17 So Makhijani's information doesn't go to that
18 cost of resuming construction of 1 and 2. But other
19 information -- I think the burden should be on TVA and
20 the and the Staff, probably TVA to prove to this panel
21 what the cost is going to be. And when that
22 information is part of the record, then, it can be
23 evaluated in light of the alternative. 112

24 >> JUDGE BARATTA: Well, we have contention
25 admissibility rules we have to follow and one of those

1 is you have to provide a basis for expert opinion of
2 facts.

3 I'm just trying to get at what are your facts
4 or expert opinion that supports that and it seems to
5 be based upon the cost of construction is what I just
6 heard.

7 MR. DOUGHERTY: You will find a citation in
8 our petition to the studies that were done by the
9 keystone Center. And we think that has a lot to do with
10 the final delivery cost of nuclear power.

11 And I'm afraid that beyond that, Judge
12 Baratta, I'm at the limit of my technical understanding.
13 I'll ask my colleague Mr. Zeller if he wants to weigh
14 in.

15 If that would be okay, he is the author of the
16 contention and frankly knows more about this than I do.

17 >> JUDGE BOLLWERK: Mr. Zeller is not -- he's
18 a representative of the party. We said one counsel or
19 one representative per party on a particular contention.

20 You want to have an objection here for
21 Mr. Zeller?

22 >> MR. CHANDLER: Only to the extent I trust
23 we are not going to get into taking testimony on this
24 matter.

25 >> JUDGE BOLLWERK: I don't think we can. I'm

1 not doing to put him under oath. So anything Staff want
2 to say?

3 >> MS. JONES: We have no objection.

4 >> JUDGE BOLLWERK: All right Mr. Zeller, why
5 don't you go ahead then, thank you.

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

7 The additional information citations and
8 factual information which is included in our filings
9 address general costs of power, both in terms of capital
10 costs, construction costs of power are all within those
11 documents.

12 So, it's not specific only to AP 1,000 Units 3
13 and 4 which are also co-located with these Units 1 and
14 2.

15 So I just wanted to add that in the case note
16 study and the other citations are much broader in their
17 addressing of both of those liberalized costs and
18 capital costs.

19 >> JUDGE BOLLWERK: All right, let me turn to
20 TVA and the Staff to see if you want to respond to that
21 and then I'll give you a final opportunity.

22 Anything TVA want to say about what we just
23 heard? 114

24 >> MR. CHANDLER: No, sir.

25 >> JUDGE BOLLWERK: Staff?

1 >> MR. ROTH: Your Honor, I would just
2 reiterate again, that just as absent a well pled waiver,
3 the prima facial evidence, should be waived, that it's
4 needed for power and energy alternatives which
5 encompass power generation, the cost of alternative
6 power are not something the staff will have in its own
7 EIS should TVA come in and make an application for it.

8 >> JUDGE BOLLWERK: All right, anything
9 further the petitioner want to say on this point?

10 >> MR. DOUGHERTY: Would it be okay if I
11 address that, Your Honor?

12 >> JUDGE BOLLWERK: Yes.

13 >>MR. DOUGHERTY: The information that we
14 submitted about cost was derived in part on the work
15 that Dr. Makhijani got on 3 and 4. But we asked him to
16 review that information in the context of the 1, 2
17 context and he is available to us to be retained to
18 testify specifically of 1 and 2. That is the
19 information we intend to offer to the panel if we
20 establish the admissibility of this contention.

21 >> JUDGE BOLLWERK: All right. Judge
22 Baratta, anything further?

23 >> JUDGE BARATTA: Nothing. 115

24 JUDGE BOLLWERK: Judge Sager, do you have
25 anything?

1 >> JUDGE SAGER: Nothing further.

2 >> : JUDGE BOLLWERK: At this point, it is
3 about a quarter to 12:00. I think the next contention
4 we are looking at, number six will be one that first of
5 all, we set it for 20 minutes per side. And I suspect
6 it may involve some lengthy discussion given I think one
7 that goes to the heart of some of the Petitioner's
8 issues.

9 My suggestion would be for to us go ahead and
10 take a break at this point. Is that all right with you
11 Judge Sager?

12 >> JUDGE SAGER: That's fine. What time shall
13 I come back?

14 >> JUDGE BOLLWERK: Why don't we go ahead and
15 make it easy for everyone. Let's say let's come back
16 at one o'clock. I think it's a little more than an
17 hour. There is a cafeteria here in the building so
18 hopefully, it should not be a problem for folks to get
19 in to that or hopefully, one of the restaurants in the
20 area. That gives us a little bit more than an hour.
21 We'll be back at 1:00 p.m., eastern time.

22 Thank you everyone.

23 (Whereupon luncheon recess was taken). 116

24

25

1 JUDGE BOLLWERK: : Judge Sager, everything
2 all right where you are?

3 JUDGE SAGER: : Just fine. I don't see your
4 picture yet, but I assume it will come up soon.

5 JUDGE BOLLWERK: : And you are hooked in to
6 the teleconference?

7 JUDGE SAGER: : I am hooked into the telephone
8 on mute and I can see your picture.

9 JUDGE BOLLWERK: : Thank you. Back on the
10 record if we could, please.

11 Good afternoon, everyone. We're here to --
12 this afternoon, to continue the official prehearing
13 conference and oral arguments on the Bellefonte Units 1
14 and 2 construction permit reinstatement, proceeding the
15 arguments with respect to the admissibility of
16 Contentions 6, 7, 8 and 9 we will talk about this
17 afternoon.

18 Again, a reminder, cell phones should be off
19 or on vibrate. And no cell phone conversations
20 obviously in this room while the board is in session.

21 With respect to Contention 6, the title, the
22 reinstatement was improper because TVA has not and
23 cannot meet the NRC's quality assurance and quality 117
24 control QAQC requirements.

25 Mr. Dougherty, I turn to you.

1 MR. DOUGHERTY: : Mr. Chairman, when I
2 explained it to my wife this involved two nuclear
3 reactors that had been partly completed, left as rust
4 for 20 years and abandoned for three years and they are
5 trying to resume construction. Her response is, well,
6 are you kidding. What she meant was how do they
7 maintain quality assurance, because that's the question
8 that leaps out to everyone when they hear the
9 circumstance. As you suggest, this is at the heart of
10 this case and our contentions.

11 Just as Ford Motor Company says quality is job
12 one, the Nuclear Regulatory Commission says that quality
13 assurance is criteria one, indeed, it's GDC number one.

14 Quality assurance is more than just the
15 regulatory requirement. It's a philosophy, a culture.
16 It's a stance that an applicant has to stay in
17 consistently. It's, kind of, like a chain of custody
18 for evidence or for samples.

19 Chain of custody has to be maintained the
20 entire Ross from the time the sample is taken until it
21 is tested and admitted into evidence, and if you lose
22 chain of custody, the quality of that sample has been
23 eliminated. There is none. You have to have chain ~~118~~
24 custody the whole time. The same is true of quality
25 assurance. If there is a gap in quality assurance,

1 one knows if they were using halogen lamps or if they
2 maintained humidity levels or temperatures. Every
3 component has been compromised or may have been
4 compromised and as Mr. Williams suggests in his
5 statement, the only way to verify this plant can be
6 constructed safely is to start from the beginning and
7 make the applicant prove to the NRC staff every SSC out
8 there meets all appropriate quality requirements.

9 Too bad that there's not a way to go back and
10 fix that. It would make more sense if somehow that gap
11 could be revisited cured, but you can't. And that point
12 has been emphasized by Chairman Jaczko, as well. We
13 lost quality assurance.

14 All I say about that is Mr. Williams has
15 gotten plaudits for his coming forward and will probably
16 get a plaque he can put on the wall, but none of that
17 matters. What matters is that you, the licensing board,
18 pay attention to what they are saying. It has to be
19 considered. If everything he is says is swept under the
20 rug, it is just a waste.

21 So that concludes my opening remarks on QAQC.
22 Thank you.

23 JUDGE BOLLWERK: : Let me turn to Judge 120
24 Baratta. Do you have questions?

25 JUDGE BARATTA: : No, not at this time.

1 JUDGE BOLLWERK: : Judge Sager?

2 JUDGE SAGER: : Nothing.

3 JUDGE BOLLWERK: : You mentioned, as you are
4 aware, they requested and were given deferred status
5 which included, I guess, the indications being that the
6 QAQC, there was a program in effect and, in fact, they
7 were going to take actions consistent with that to bring
8 everything back up to snuff, as it were.

9 How does that affect your contention? You
10 have not filed anything further or discussed any of that
11 information.

12 MR. DOUGHERTY: : No, our contention stands.
13 What our expert tells me that, and again, sorry to
14 repeat myself, it is like chain of custody. Once it has
15 been interrupted, it can't be restored. So getting back
16 on track, getting back into compliance with the QAQC
17 protocol does not recover the missing three years. We
18 don't know what happened, we don't know if parts
19 corroded. We know parts were cannibalized, but that
20 invalidates any attempt.

21 We would have to go back on component by
22 component basis, probably with direct physical
23 examination, to make sure that it's still in operative¹²¹
24 and in good shape. You cannot -- QAQC lets you assume
25 that when you put things in this place, they remain

1 workable. Those assumptions cannot be made any longer.

2 JUDGE BARATTA: : I don't disagree. I agree
3 100 percent, but I do see in the letter from TVA that it
4 says equipment not subject to preventive maintenance
5 would be entered in the program and prohibited from
6 being placed in service without further evaluation, and
7 having been fully restored and replaced. Isn't that
8 what you are saying, and Mr. Gunderson's saying , you
9 have to check out the stuff that hasn't been maintained?

10 MR. DOUGHERTY: : Yes, but in the context of
11 adjudicatory proceeding. The burden should be placed on
12 them to demonstrate to this panel they have, in fact,
13 done that and they can now demonstrate that everything
14 meets quality requirements.

15 JUDGE BARATTA: : That is not quite what your
16 contention said, though. Well, it did not even
17 acknowledge the existence of a corrective action
18 program.

19 MR. DOUGHERTY: : Well, there may have been a
20 lot of facts and existence we didn't acknowledge, but
21 our central point remains unaffected by that. If once
22 interrupted, I don't know actually what corrective
23 action is. I don't know to that purports to "cure" 122
24 every problem that may exist. We've been told by our
25 attorneys it can't be cured, you have to go back to

1 square one and recertify how every bolt was turned,
2 every component was tested. It's thought my
3 understanding that is what they have in mind, but if
4 that's incorrect, I'll have to stand corrected.

5 JUDGE BOLLWERK: : Anything further?

6 JUDGE BARATTA: : I refer, again, to page six.
7 You need to read that. That seems to be -- page six of
8 the letter dated the 26th of August.

9 MR. DOUGHERTY: : 2008?

10 JUDGE BARATTA: : Yes.

11 MR. DOUGHERTY: : I'll do that. I was going
12 to suggest I do it on rebuttal.

13 JUDGE BOLLWERK: : Judge Sager, anything you
14 have at this point?

15 JUDGE SAGER: : No, nothing for me. Thank
16 you.

17 JUDGE BOLLWERK: : We will go to TVA and come
18 back to petitioners if they have any response to that.

19 MR. VIGLUICCI: : Thank you, Mr. Chairman.
20 In the originally proposed contention, we started with a
21 suggestion that since termination of the construction
22 permits in 2006 the facility was not maintained in
23 accordance with the requisite NRC quality assurance 123
24 requirements, or subject NRC oversight, and, therefore,
25 the material condition is indeterminate, though we hear

1 that the plants have not been covered by quality
2 assurance program for 20 years. That's clearly not the
3 case. Replete throughout the August 2008 letter,
4 requesting reinstatement of the construction permits and
5 as represented in the answer to the petition and other
6 documents, the very purpose for which TVA has sought
7 reinstatement is to reexamine the plant, reestablish and
8 determine what it's material condition is and take those
9 steps necessary to assure compliance with quality
10 assurance requirements as they deem appropriate in terms
11 of their overall decision whether to proceed with the
12 facility.

13 This proposed contention, like the other
14 contentions, again, doesn't challenge TVA's statement
15 good cause for seeking good cause for construction
16 permits and is outside the scope of this proceeding. It
17 lacks any adequate support, other than a sweeping
18 assertion that you cannot restore confidence in the
19 structure systems and components of the facility. There
20 is simply no basis for those suggestions and, therefore,
21 the contention should be rejected as not complying with
22 10 CFR, section 2.309, f1, 3, 4, and 5. In fact, this
23 contention, as I said a moment ago, simply misses the
24 point.

25 TVA has already expressly recognized that

1 structures -- that there are structures that have been
2 substantially completed, that there are others that need
3 more activity, more inspection, to revalidate in terms
4 of compliance with NRC requirements, and those are the
5 efforts that it wishes to undertake under -- and is
6 preceding to undertake under the reinstated construction
7 permits.

8 The nuclear quality assurance program at
9 Bellefonte's units one and two has been reestablished
10 and is being implemented, and the NRC staff has
11 inspected that program and confirmed its adequacy and
12 has resumed appropriate inspection and oversight
13 activities to assure NRC requirements. They are
14 addressing the plants material condition to determine
15 what further may have to be restored or replaced as the
16 need arises.

17 The NRC reviewed that, conducted inspections,
18 and found it to be acceptable. That Chairman Jaczko and
19 Mr. Williams may have had differing views, in a sense,
20 this is not extraordinary. The NRC has a long and
21 well-established process, as I think the staff earlier
22 acknowledged, encouraging staff members to express
23 differing views or non-concurring views, as the case ¹²⁵may
24 be, and it is clear that the commission's internal
25 processes recognize the possibility that you will not

1 have unanimity among the commissioners in reaching their
2 decisions.

3 But what is most significant in this regard is
4 the points raised by Mr. Williams and by the chairman in
5 their differing views on this matter, were fully and
6 completely addressed by the staff and by the commission
7 in resolving the matters that were before them for
8 decision.

9 In January 2010, petitioners filed a
10 supplemental basis for this contention in which they
11 provide documentation regarding attending coupling
12 failure and alleged QA deficiencies with respect to
13 that. Again, as with respect to proposed contention 5,
14 the supplemental basis for proposed contention 5, TVA
15 filed a motion to strike largely on the same grounds
16 that were identified for its earlier motion to strike.

17 At bottom, the approach that petitioners would
18 have us take deprives other parties from an opportunity
19 to respond to the contentions, and all the bases as they
20 are represented, if they are simply able at will to file
21 additional bases and positions with respect to the
22 issues. Nevertheless, we did respond to the substance
23 of this proposed contention in our January 29th answer¹²⁶
24 As noted there, fundamentally it's just an example of
25 the originally proposed contention without adding

1 anything new that is in itself material to the
2 proceeding.

3 In short, the contention lacks an adequate
4 basis, it's insufficiently pled and is vague, and for
5 that reason should be rejected.

6 I would also note, as the board has inquired
7 whether there are other appropriate avenues which could
8 be employed to get resolution of these issues, in fact,
9 there are two. Clearly to the extent petitioners have a
10 concern that their current ongoing quality assurance
11 issues that may affect public health and safety, the
12 avenue of 2206 is a very viable approach.

13 Alternatively, these are matters that will be
14 addressed should TVA decide to pursue an application,
15 its application for operating licenses in connection
16 with the safety evaluation of the facility in that
17 regard. Assuming they are otherwise admissible, I would
18 expect they could propose a contention at that point.
19 That would be the right opportunity, the findings that
20 have to be made in that regard by the commission before
21 issuing an operating license or the kind of findings to
22 which these kind of issues -- issues have bearing.

23 That completes my position, Mr. Chairman. 127

24 JUDGE BOLLWERK: : All right. Judge Baratta,
25 any question?

1 JUDGE BARATTA: : In your prepared statement,
2 you made reference to completed structures or something
3 to that. Could you --

4 MR. VIGLUICCI: : I think as noted by both TVA
5 in its request, its August request, and by the staff in
6 its safety evaluation report, the construction permits
7 here having been issued in 1974 were used. The
8 containment structure is there in substantial part,
9 cooling towers are there. There are other structures
10 also that are -- that exist.

11 JUDGE BARATTA: : But, I understand that. You
12 seem to make a distinction between those of ones that
13 were not complete relative to QA that -- did I
14 understand you correctly?

15 MR. VIGLUICCI: : No, I wasn't really trying
16 to draw a distinction over there. The point is,
17 clearly, the activities that were conducted in the past
18 were conducted under appropriate quality assurance
19 requirements.

20 JUDGE BARATTA: : And for how long were they
21 not under a QA program?

22 MR. VIGLUICCI: : Full QA program, I think,
23 it's roughly in the neighborhood of three years since
24 withdrawal of the construction permits in September, I
25 believe it was, of 2006. I assume they probably stopped

1 somewhat before that point in time.

2 JUDGE BARATTA: : And could you briefly
3 describe the corrective action program that's referenced
4 in that letter I mentioned earlier?

5 MR. VIGLIUCCI: : I am not sure I can. If I
6 can have one moment. I think, Judge Baratta, the actual
7 activities subject to QA were terminated somewhere in
8 the November 2005 timeframe and probably were not
9 resumed until approximately the March 2009 timeframe.
10 The corrective action program, if you need a
11 description, I would have to provide that separately. I
12 think it's intended to be a corrective action program as
13 envisioned by appendix B to the commission's
14 regulations.

15 JUDGE BOLLWERK: : All right. Anything
16 further at this point? Judge Sager?

17 JUDGE SAGER: : No.

18 JUDGE BOLLWERK: : You made a statement that
19 the contention is outside the scope of the proceedings
20 because the argument is being made that the good cause
21 is defined by what was put forth by TVA goes to
22 questions about, for instance, the cost per kilowatt
23 hour, installed capacity, the decrease in suppliers,¹²⁹
24 sorts of economic considerations you mentioned before.
25 And that, of course, is on page 5 of the original August

1 26, 2008 letter that TVA submitted to the staff
2 requesting reinstatement of the construction permits for
3 units one and two.

4 But I'm looking at page one of that letter and
5 the second paragraph, and it talks about as explained
6 below, of course, the question is what does the word
7 below mean, good cause exists to support TVA's request,
8 the Bellefonte plan was substantially complete, and
9 prior to withdrawal of the construction permits was
10 being maintained in a deferred construction status
11 consistent with NRC's definition for deferred plants --
12 for deferred nuclear plants as described in 87 -- policy
13 15 in policy statement on deferred plants.

14 Reinstatement of the permits would allow TVA
15 to, one, return the units to deferred status and resume
16 preservation and maintenance activities as proposed
17 under the deferred plan policy; two, determine, the
18 relative degree of certain difficulties and whether
19 operation of the units is a viable option. It strikes
20 me that what you have defined as the good cause factor
21 you gave on page five of that letter goes to the second
22 point, but the first point is what the intervenors are
23 really talking about, to return the units to the 130
24 deferred status.

25 Wasn't this really an underlying assumption if

1 you had come in and requested the plant simply be
2 reinstated without indicating that it could be brought
3 into a deferred status, would staff have even considered
4 this request; if you cannot show you were ready for
5 deferred status would you have gotten your license
6 reinstated?

7 MR. VIGLIUCCI: : Hard to speculate. Recall
8 the commission, of course, first directed the
9 reinstatement be authorized as a terminated plant, which
10 is short of a deferred plant in terms of the activities
11 that are permitted. How the staff would have reacted if
12 the initial request had been cast in terms of that, I
13 can't speculate at this time.

14 JUDGE BOLLWERK: : But to bring it back to a
15 terminated status would be bringing it back to where it
16 was, essentially.

17 MR. VIGLIUCCI: : I think -- let me see if I
18 can phrase it this way. Clearly they're activities that
19 TVA, too, have undertaken on its without, one, the
20 preemptors of the NRC and the authority of a
21 construction permit, activities not really subject to a
22 need for a construction permit. But TVA, as we have
23 explained repeatedly, has a larger charge in mind, ~~that~~
24 is determining whether units one and two present a
25 viable generating capacity option for their needs, and

1 for that reason, wish to take a very hard look at the
2 facility, the material condition of the facility, the
3 viability of the facility in many respects, to see how,
4 what more needs to be done to reestablish them, and
5 whether they should be pursued.

6 It's a phased approach, starting with a more
7 modest -- the request had been for deferred plant
8 status, and if that proves out, perhaps going forward
9 with 120-day letter to resume more active construction
10 activities. What the benefit of the reinstated CP is
11 to, if you will, lend the credibility of the NRC process
12 and oversight, the requisite competence of a quality
13 assurance overlay to the activity that TVA is
14 undertaking.

15 JUDGE BOLLWERK: : But if the plant could not
16 be brought to deferred status, was it really a viable
17 option?

18 MR. VIGLUICCI: : I'm not sure I understand
19 the question.

20 JUDGE BOLLWERK: : I guess it goes back to the
21 same point which is that absent some showing, some
22 indication by TVA that this plant could be brought to
23 deferred status, was there any viability to the plant¹³²

24 MR. VIGLUICCI: : The difficulty I am having
25 to answer is that really is the question TVA is asking

1 itself. TVA sought the commission's reinstatement of
2 the construction permits to undertake these activities
3 to answer that question.

4 JUDGE BOLLWERK: : We are in a loop, but is
5 that good cause for reinstating the facility?

6 MR. VIGLUICCI: : Again --

7 JUDGE BOLLWERK: : Viability could be economic
8 but it also could be technical. If the plant has no
9 viable in technical matter, what is the good cause? And
10 I'm reading your letter; it says, one and two, that's my
11 question, one is technical, and two is economic.

12 MS. SUTTON: : With the board's permission,
13 yes, Your Honor, the paragraph you are referring to on
14 page 1, when this was -- it might not be the paragon of
15 clarity right now, but the "good cause" as explained
16 below, the good cause as set forth on page 5 as you
17 demonstrate, and those factors are the good causes
18 necessary to get to the point of reinstatement. Once
19 you get to the point of reinstatement, as this clearly
20 says in this first paragraph, reinstatement of the
21 permits then allows TVA to, item number 1, return the
22 units to deferred status and resume preservation and
23 maintenance activities. So we're viewing it in a 133
24 subwise fashion opposed to the item number 1 being one
25 of the elements of good cause.

1 JUDGE BOLLWERK: : All right. Judge,
2 anything?

3 JUDGE BARATTA: : No.

4 JUDGE BOLLWERK: : Judge Sager?

5 JUDGE SAGER: : Nothing here.

6 JUDGE BOLLWERK: : I turn to the staff and if
7 you have anything to say about the questions I just
8 raised or that Judge Baratta raised, you're certainly
9 welcomed to do so.

10 MR. ROTH: : David Roth of the staff. The
11 role of quality assurance and reinstatement request can
12 be best learned by dealing with what the commissioner
13 wrote. She described a process that the commission told
14 the staff to go forward on which involves restoring the
15 plants to terminated status and then, subsequently,
16 based on inspection results, deciding whether the plant
17 could go forward with deferred. So it really becomes
18 academic to decide whether good cause for deferred is
19 the issue because the commission's voting record is
20 clear, and the commission is looking for a good cause,
21 proceeding relative to reinstating the permits, and in
22 this case, so deferred status is not one for good cause.

23 Second, there's really a lack of disagreement¹³⁴
24 on the contention. The petitioners state that TVA does
25 not implement quality assurance plan, the staff is aware

1 TVA didn't do it and TVA has actually reported this
2 pursuant to 5055-e on May 14 of 2009, after they
3 reinstated the quality assurance plan, they provided, as
4 required by the regulations, their report of the quality
5 assurance breakdown along with the corrective actions
6 for that.

7 Thus, further demonstrating that this issue of
8 having the quality assurance is not part of the
9 testimony nation, it's part of the after the permits are
10 reinstated what administrations are required under those
11 permits.

12 Third, Your Honor, it inquired about the
13 quality assurance program. Since the time of the
14 reinstatement, TVA has reinstated the corporate-wide
15 quality assurance program, but the fact they were going
16 to do this, because they had the permit, they had to
17 reinstate the quality assurance program. Your Honors
18 specifically asked about corrective actions or what they
19 do with significant corrective actions under that
20 program. The last version is dated January 15, 2010,
21 for TVA corporate-wide quality assurance program and,
22 specifically, in section 10.2.2, you can find sections
23 regarding corrective action for adverse quality. The
24 petitioners, again, have not referenced these documents.
25 Perhaps there is a new filing or the previous versions

1 to show why the corrective action programs must be
2 addressed pursuant to good cause or in the good cause
3 proceeding for the construction proceedings
4 reinstatements.

5 As far as quality assurance, it is something
6 that is appropriate for operating license review and if
7 there is a significant breakdown in quality assurance
8 alleged by the petitioners or determined by the staff,
9 perhaps the commission will issue an order itself. One
10 could petition for 2206 for such action and the staff
11 could, in fact, deny an operating license based on
12 quality assurance problems. But none of that is
13 relevant to the reinstatement permit and the good cause
14 for reinstatement, which rather than demonstrating that
15 there is an effective corrective actions program as one
16 might need for original construction permit proceeding
17 is instead reinstating the existing construction permit.

18 JUDGE BOLLWERK: : The analogy was used that
19 this is like chain of custody and once it's broken, it
20 really cannot be fixed in any significant way. Do you
21 agree with that argument?

22 MR. ROTH: : Certainly. I believe our
23 briefings have stated TVA proceeds at risk if they 136
24 cannot produce the adequate documentation to satisfy
25 the staff and then it cannot be put in service.

1 JUDGE BOLLWERK: : Do you want to say anything
2 about that?

3 JUDGE BARATTA: : I was waiting to hear what
4 you are going to say.

5 JUDGE BOLLWERK: : Well, I think the
6 petitioner's argument was, basically, that once it's
7 broken, it's broken. You say once it is broken, it is
8 broken, but it can be fixed. I may be putting words in
9 your mouth, Mr. Dougherty.

10 MR. DOUGHERTY: : I am with you.

11 MR. ROTH: : The petitioner could be correct.
12 If it is broken, it could be irretrievably fixed, but
13 the fixing process, whether broken or not, involves
14 putting in service for the operating license, not for
15 reinstatement of the permit. That, again, the operating
16 license stage, petitioners could certainly provide
17 well-crafted intention relative to quality assurance.

18 JUDGE BOLLWERK: : We went over this before,
19 but there was a staff review process, but there was no
20 hearing notice that wants out relative to the request
21 for return to deferred status.

22 MR. ROTH: : That's correct, Your Honor.

23 JUDGE BOLLWERK: : Judge Baratta, you have¹³⁷
24 anything?

25 JUDGE BARATTA: : No.

1 JUDGE BOLLWERK: : Judge Sager?

2 JUDGE SAGER: : A question on deferred status.
3 It sounds like what we are saying is that once a piece
4 of equipment is not under QA, it becomes prejudice, in a
5 sense it has to be proven that it's -- that it can be
6 brought back up to standard. Is there any standard
7 under the deferred status for a plant that all equipment
8 in that plant has to be, that can't contain any
9 equipment that has to be brought up to code yet?

10 MR. ROTH: : If I'm understanding Your Honor's
11 question, if the commission's policy on deferred plants
12 would somehow prohibit the utility from saying, here's
13 some equipment, this equipment is quarantined because we
14 can't demonstrate its quality assurance, that affect,
15 no, the policy contains no prohibition that would
16 somehow prevent a plant from saying we do not like this
17 equipment, we think it's broken and we don't even --
18 pursuant to our quality assurance plan, this equipment
19 will need additional review.

20 JUDGE SAGER: : That was my question. One
21 other follow-on question. Did I understand you
22 correctly to say that all of the equipment has been
23 reviewed and has passed review? I heard you say 138
24 something that the staff had reviewed the status of the
25 terminated plant and approved it to go to deferred

1 status.

2 MR. ROTH: : By that there is no intention to
3 say the -- the staff had in speakings that verified, to
4 the staff's satisfaction, that the quality assurance
5 program has been re-implemented; however, as we have
6 stated, nobody disagrees that the plant spent several
7 years without a quality assurance program. During that
8 time, equipment may have degraded, may have rusted, may
9 have had halogen inappropriately introduced to it, and
10 all that equipment, pursuant to TVA's corrective action
11 program, will have to be addressed or quarantined by the
12 plant. But at this juncture, for the reinstatements,
13 that doesn't go to good cause.

14 JUDGE SAGER: : Okay, thank you.

15 JUDGE BOLLWERK: : Can you provide us with any
16 information about the cap in terms of what it consists
17 of? Is it in the record in terms of the atoms?

18 MR. ROTH: : I could not give you an ML number
19 at the moment, but we can try to look that up later.
20 The latest submission. though, is dated January 15,
21 2010, and the subject line is nuclear quality assurance
22 program, TVA-NQA-PLN89-A or TVA -- and the other letter,
23 whereupon TVA announces their breakdown in the quality
24 assurance program, is dated My 14, 2009.

25 JUDGE BOLLWERK: : To what degree does the NRC

1 have an ongoing inspection program to look at -- you
2 obviously went through, you did an inspection at the
3 time that the request came in, to return the plant to
4 deferred status. What do you do going forward?

5 MR. ROTH: : Going forward, I can tell you
6 what was done historically. The commission may choose
7 to do it differently in the future. Historically, at
8 Bellefonte, resident staff or regional staff from other
9 sites have gone and performed the NRC's quality
10 assurance inspection program for delayed plants. This
11 inspection, if I recall correctly, is a twice-a-year
12 inspection, though it might be just once a year. I need
13 to consult with text staff to verify that. The results
14 of the inspections are within ADAMS inspection report
15 and identified violations in the past.

16 Thus the NRC has an ongoing oversight program
17 for deferred laboratories, including Bellefonte. And I
18 can give you the specific inspection program procedure
19 for that, too.

20 JUDGE BOLLWERK: : Given the staff did an
21 inspection back in, let's see ... I can see it here, I
22 believe back in the fall, when would the next inspection
23 be, if you know? 140

24 MR. ROTH: : I do not have this information.
25 The inspection procedure entitled review of quality

1 assurance for extended construction delay is inspection
2 procedure 92050.

3 JUDGE BOLLWERK: : Anything further, Judge
4 Baratta?

5 JUDGE BARATTA: : Not for the staff, no.

6 JUDGE BOLLWERK: : Something for TVA? This is
7 the time if you did.

8 JUDGE BARATTA: : I will wait until rebuttal.

9 JUDGE BOLLWERK: : Judge Sager, anything?

10 JUDGE SAGER: : Nothing here. Mr. Dougherty?

11 MR. DOUGHERTY: : If Judge Baratta, if you
12 have a question, I think you should raise it now.

13 JUDGE BARATTA: : Well, it sounds like what
14 you wanted was for TVA to confirm the status of the
15 equipment, and you were skeptical whether they could
16 confirm that it's satisfactory. It sounds like they are
17 going out trying to confirm whether or not the status --
18 confirm the status of the equipment and whether it is
19 satisfactory. Is it a question of the timing? Is that
20 what the issue?

21 MR. DOUGHERTY: : No, I say it's a question of
22 the forum. We believe we have a right under section 189
23 of the Act to a hearing on genuine issues that are 141
24 material to the safety of the plant. They sent a letter
25 -- actually, this letter was sent almost two years ago,

1 a year and a half ago, and proceeded our intentions; we
2 filed a contention saying there are issues here. They
3 have claimed in the letter they have a corrective action
4 program and everything is fine; they will take care of
5 it.

6 But I think the question is, can they do that
7 informally with the staff, or do those questions get to
8 be ventilated in adjudicatory proceeding like this one?
9 And what we're saying is we have a right as the public
10 to make sure their submissions are testified in the
11 crucible of cross-examination, going through our expert,
12 and being part of the judgment.

13 So that is our point. It should be resolved
14 in this proceeding, not informally with the staff. Now
15 you asked about that paragraph on page 6, I find the
16 paragraph, kind of, ambiguous, too, but what I take from
17 it is that some of the equipment in the plant is going
18 to be entered into TVA's corrective action program.
19 When it says, "equipment" in the middle of the
20 paragraph, "equipment not subject to preventive
21 maintenance under Layia program would be entered into
22 the corrective action program." And then they add in
23 the next sentence that "systems and components that ~~142~~
24 have been affected in the course of cannibalization,"
25 what I call it, "would likewise be entered into TVA

1 discretion active program."

2 So they will make judgments what components go
3 into the cap and which don't. We think those judgments
4 deserve scrutiny. I would like to get my expert's
5 opinion whether they are putting the right components
6 into the CAP or not, and we would like to test the
7 staff's opinion, the statutory safety standards have
8 been met.

9 Judge Baratta, you read all but the last
10 sentence of the second paragraph on page 1, and I found
11 the last sentence was important, I think. TVA has said
12 and this was, again, August of a year and a half ago, if
13 and when the construction permits are reinstated, then
14 TVA would, among other things, seek to establish the
15 regulatory framework and licensing basis upon which the
16 units could be completed.

17 Now, what they are saying we don't really know
18 what licensing proceeding lies ahead. This is, as I
19 said before, uncharted waters in licensing nuclear power
20 plants. They seem to be saying getting the CP
21 reinstated does not give them the status they want or
22 need to resume construction. In fact, we need to
23 establish the framework and licensing basis upon which ~~143~~
24 they can get that authorization.

25 And we are saying the same thing. We are

1 saying we need a adjudicatory process, like what
2 happened to the system and components. Again, this is
3 the other contention in which we submitted what we
4 thought was a supplemental basis, according to the staff
5 and TVA, we didn't do so properly and there should be a
6 cover motion asking for leave, and if that is what the
7 panel desires, we will do that.

8 It is my understanding that there's an
9 unwritten, perhaps even a written rule, in the NRC
10 procedures that when a party is represented pro se, that
11 they are cut a little slack in terms of the procedural
12 niceties, and that is the category which this falls.
13 Maybe we did not understand in the cover motion, but
14 that was the intent, to submit this as something that
15 should be part of the record and, obviously, to the
16 extent the other parties oppose. And we replied to
17 their opposition. There must be a way to get this on
18 the record; we were not pulling a fast one.

19 And that concludes my rebuttal. Thank you.

20 JUDGE BOLLWERK: : Judge Baratta?

21 JUDGE BARATTA: : No.

22 JUDGE BOLLWERK: : I take it the answer that
23 staff provided by reading the portion of Commissioner¹⁴⁴
24 Bency (phn) statement answered the question that I posed
25 that if TVA said nothing of questioned status, the

1 agency or the staff would have been willing to give them
2 a license. It simply got them back up to status where
3 they, the plant had been terminated.

4 MR. ROTH: : That appears to be what
5 Commissioner Bency (phn) said, yes.

6 JUDGE BOLLWERK: : Judge Sager?

7 JUDGE SAGER: : Not at this time.

8 JUDGE BOLLWERK: : Nothing further on this
9 one?

10 Okay. Let's then go to Contention 7, which is the
11 Bellefonte units one and two cannot satisfy NRC safety,
12 environmental and other requirements that have been
13 imposed or upgraded since 1974. Mr. Dougherty?

14 MR. DOUGHERTY: : We consider Contention 7 to
15 be a common sense contention that's ultimately grounded
16 in the dissenting opinion from NRC's staff, Staffer
17 Williams. He said that since the CPs were issued to
18 this facility, the regulatory requirements have changed
19 and have been upgraded, and particular he cites -- not
20 only did he cite changed standards regarding flooding,
21 but that the staff is now of the opinion, according to
22 him, and as I recall his statement is not in his
23 opinion, but, rather, in the staff's opinion, the 145
24 determinations were made, beginning in 1974 about site's
25 ability, including flooding risk, were made erroneously

1 and that because now what purports to be -- pretends to
2 be higher water levels, the judgments need to be made
3 again. So, this is really just an attempt to embody
4 that concern in the form of a contention. That's all I
5 have.

6 JUDGE BOLLWERK: : The question I have -- the
7 deferred plant status policy anticipates plants will be
8 put in deferral and things are changed and they have to
9 address those as part of the deferral process. Does
10 that --

11 MR. DOUGHERTY: : Well, we think this is
12 different, where a plant has a permit withdrawn or
13 terminated and it sits dark and cold for some period of
14 years, that the deferral process doesn't apply. In this
15 case, evidently, it was dark and cold and outside the QA
16 process for approximately 3-1/2 years, but it could have
17 been 15 years. The TVA has offered no bright line when
18 added requirements come into place. We say when you get
19 out of the process, then, to get back in you should be
20 expected to comply with the contemporary licensing
21 requirements.

22 Now, and we would not make this contention if
23 the plant had stayed and remained in deferred status~~146~~
24 the entire period when it was not being built.

25 JUDGE BOLLWERK: : Having lost their -- having

1 withdrawn it and they fell outside the parameters and
2 though they need to get back within the parameters and
3 they have to go back and comply?

4 MR. DOUGHERTY: : We say flooding. There is
5 evidence that the original determination was erroneous
6 and that is what we said needs to be reviewed, not
7 everything. Although that argument could be made, we
8 just have not made it.

9 JUDGE BOLLWERK: : All right.

10 JUDGE BARATTA: : Nothing.

11 JUDGE BOLLWERK: : Judge Sager?

12 JUDGE SAGER: : Nothing.

13 JUDGE BOLLWERK: : Then we'll turn to TVA.

14 MR. VIGLIUCCI: : Proposed contention 7 is
15 inadmissible, alleging because of new data and purported
16 past errors and completely new environmental impact a
17 safety review must be conducted prior to the issuance of
18 a new reinstated construction permit at Bellefonte, and
19 this fundamental concern just voiced is fully addressed
20 by the processes I'll explain to you.

21 As a result, this proposed contention falls
22 outside the scope of this proceeding because it seeks to
23 revisit plant sighting issues related to the initial[147
24 granting of the CP and to challenge TVA's ability to new
25 NRC requirements that may have arisen since issuance of

1 those permits. I must repeat myself here that this is a
2 good cause proceeding on TVA's reinstatement request and
3 is not a vehicle for reevaluating the original
4 environmental and safety reviews of TVA's initial CP
5 application.

6 For that reason, these issues are not
7 litigable under section 2.309 9F013. So you ask, where
8 are such issues best addressed? Through either the 2206
9 process or in a future operating license proceeding.
10 This answer goes directly to the questions again posed
11 by the board in its February 18 memorandum and in order,
12 and let me explain.

13 First, to the extent petitioners believe there
14 are health and safety issues currently warranting
15 commission action, the appropriate recourse is to
16 request a file pursuant to section 2206. Second, the
17 commission recently noted again in COI-10 of 6, should
18 TVA apply for an operating license, there will be a
19 future hearing opportunity on that application. Under
20 parts 2N50, interested persons would have the
21 opportunity to raise contentions in an NO1 proceeding.
22 In this regard, with respect to safety issues, it's
23 important to recall that a CP constitutes only an 148
24 authorization to proceed with construction and does not
25 constitute the commission's approval of the safety of

1 any design feature.

2 The NRC will not issue a license authorizing
3 operation of the facility until it has found that the
4 final design provides reasonable assurance that the
5 health and safety of the public will not be endangered
6 by its operation in accordance with future operating
7 license and NRC regulations. Thus, any issues affecting
8 or related to safe operation of the units, including any
9 potential new data regarding site geology, seismology,
10 meteorology, or hydrology as alleged to proposed
11 contention seven would be addressed before OL issuance.

12 Such issues are not recognizable in this
13 proceeding on the limited question of whether there is
14 good cause for reinstatement of the CPs. From an
15 environmental perspective, reinstatement of the CPs in
16 terminated or deferred status does not authorize any
17 work that is not already permitted by the original CPs.
18 The environmental impacts of building units one and two,
19 which already have largely occurred, were considered by
20 the NRC in its original FES for the Bellefonte unit one
21 and two CP application.

22 If TVA decides to resume the OL review
23 process, then any necessary revisions to its 149
24 environmental review documents to support eventual plant
25 operation would be made at that time. We discussed this

1 at length this morning.

2 Finally, I turn to petitioner's claims of new
3 data and developments, including new NRC requirements.
4 These, likewise, fail to establish the existence of a
5 genuine material dispute fit for adjudication in this
6 good cause proceeding. If TVA ultimately seeks to
7 reactivate construction of Bellefonte, it would then be
8 required to address section 3a of the commission's
9 deferred plant policy statement, which specifically
10 calls for consideration of new regulatory requirements.
11 Namely, TVA would be required to address new regulations
12 to the extent applicable to units one and two or seek an
13 exemption if it decides to resume construction on one or
14 both units.

15 Section 3a6 of the deferred plant policy
16 statement calls for TVA to notify the NRC in writing at
17 least 120 days before plant construction is expected to
18 resume. Among other things, this 120-day letter that we
19 referred to here in the discussions must identify any
20 new regulatory requirements applicable that have become
21 effective since plant construction was deferred,
22 together with a description of the licensees' proposed
23 plans, or a commitment to submit such plans by a 150
24 specified date.

25 This and other information, such as security

1 and other required plans, operating procedures,
2 technical specifications and a facilities design would
3 be evaluated during the review of the OL application.
4 At the present time, however, the issues raised by
5 petitioners in proposed contention 7 are outside the
6 scope of this proceeding and must be rejected. That
7 completes my remarks.

8 JUDGE BARATTA: : Relative to the -- let's say
9 they do -- we find there was good cause to move forward
10 and get to the point where TVA wants to permit an
11 operating license. What new information would you have
12 to provide at that point in order to amend your existing
13 operating license application so as to be consistent
14 with the flooding issues?

15 MS. SUTTON: : Yes, Your Honor. TVA is doing
16 a review of the FSAR on a line-by-line basis and if
17 there is new information that would have to be updated
18 as part of the FSAR review, they would do so. In
19 addition, as I have explained, they are doing a review
20 under the deferred plant policy statement of any new
21 regulatory requirements that would require further
22 amendment to the OL application, and, again, I would
23 expect such information may be incorporated into the¹⁵¹
24 FSAR.

25 JUDGE BOLLWERK: : Anything further?

1 JUDGE BARATTA: : Not at this time.

2 JUDGE BOLLWERK: : Judge Sager?

3 JUDGE SAGER: : No questions for me.

4 JUDGE BOLLWERK: : I think the point, if I
5 understand what joint petitioners are making is that
6 this problem is solvable by the process in the deferred
7 plant policy statement, but the deferred plant policy
8 statement didn't apply here because this wants a
9 deferred plant? It's sort of a bootstrap argument.

10 MS. SUTTON: : But the deferred plant policy
11 statement will apply if TVA decides to potentially
12 proceed with construction. They will have to file a
13 120-day letter, do the necessary analyses and move
14 forward on that front.

15 JUDGE BOLLWERK: : That's true, but this
16 wasn't -- again, back to the same point, this wasn't a
17 deferred plant, but a reinstated plant. So how can you
18 justify the policy based on this plant?

19 MS. SUTTON: : That is true, but it is
20 reinstated into deferred status, and it is fully
21 anticipated TVA will have to comply with that policy.

22 JUDGE BOLLWERK: : But this isn't a deferred
23 plant policy statement or deferred plant proceeding.¹⁵²
24 In fact, there wasn't such a proceeding. The only one they
25 had to come to was the reinstatement.

1 MS. SUTTON: : But the results of that
2 analysis conducted as part of the deferred plant policy
3 statement, should TVA decide to move forward in an
4 operating license context, would be subject to a notice
5 of opportunity for hearing.

6 JUDGE BOLLWERK: : Say that again?

7 MS. SUTTON: : NCLA1006, the NRC has
8 indicated, and I will look for the site again, that
9 should TVA apply for an operating license, there will be
10 a future hearing opportunity on that application, and
11 they will have the opportunity to raise these sort of
12 issues as part of that proceeding. It's just not ripe
13 for review in the context of this very narrow
14 reinstatement proceeding.

15 JUDGE BARATTA: : We just heard that you
16 already have an application for operating license,
17 though.

18 MS. SUTTON: : That is correct.

19 JUDGE BARATTA: : So you will not be applying
20 for an operating license, will you?

21 MS. SUTTON: : We don't believe we need to
22 apply, but I don't know that decision has been made.

23 JUDGE BARATTA: : Therefore, that statement¹⁵³
24 not valid.

25 MS. SUTTON: : That is a statement of the

1 commission, Your Honor. Should TVA apply for an
2 operating license, there will be a future hearing
3 opportunity on that application. Now, as you also know
4 in the case of Watts Bar, there is a similar opportunity
5 for hearing that case. So I think that there is
6 commission presence, there will be an opportunity for
7 the public to participate in the operating license
8 proceeding.

9 JUDGE BARATTA: : There is no doubt you have
10 to come up with an amendment to incorporate the TMI, and
11 explain how you do that.

12 MS. SUTTON: : Correct. Correct.

13 JUDGE BOLLWERK: : Whether you supplement the
14 existing application or whether you file a new one,
15 there will be a hearing, or hearing opportunity.

16 MS. SUTTON: : One would expect there would be
17 a renotice.

18 JUDGE BOLLWERK: : Anything further? Judge
19 Sager?

20 JUDGE SAGER: : Nothing for me.

21 JUDGE BOLLWERK: : And now we turn to the NRC
22 staff.

23 MS. JONES: : Andrea Jones for NRC staff. 154
24 think counsel for TVA did a pretty thorough job of
25 explaining, and explaining what I was going to explain

1 and that is that we don't believe the contention 7 is
2 admissible. It raises issues that presumes that we
3 should go back to the official construction review stage
4 and that's just not where we are.

5 Issues related to part 100, those are issues
6 that would be required as part of 50.55 as part of TVA's
7 final safety analysis report as part of the operating
8 license application review stage, and should TVA decide
9 they want to proceed to that stage, they would be
10 required to address that information at that point in
11 time, but we don't believe this is the appropriate time
12 to have those issues raised, and it was not part of the
13 decision for reinstatement.

14 JUDGE BOLLWERK: : Do you think the agency
15 should have a reinstated plant policy?

16 MS. JONES: : I don't pretend to -- I'm not
17 going to elaborate on agency policy. I think it would
18 be inappropriate to do.

19 JUDGE BOLLWERK: : You can understand the
20 petitioner's frustration, this is not a deferred plant
21 and it was a request to reinstate, not defer it.

22 MS. JONES: : Right, it was re-instated to
23 terminate status. 155

24 JUDGE BOLLWERK: : But it was not deferred and
25 that's the policy being -- I'm being told will be the

1 one that controls whether they have to meet the -- they
2 can go back, how, exactly, they have to address any
3 upgraded requirements.

4 MS. JONES: : Any upgraded requirements, if
5 they advise us they will resume construction and it is
6 part of the policy and I believe that it was made part
7 of the order when we initially issued the OR for
8 reinstatement they would be required to advise us of
9 what requirements would apply to their facilities and
10 how they intend to comply and, of course, we would
11 review that information at that time.

12 JUDGE BARATTA: : And that would be handled by
13 an application for amendment to license?

14 MS. JONES: : No, it would not an application
15 to the license.

16 JUDGE BARATTA: : Their operating license?

17 MS. JONES: : There currently is not an
18 operating license.

19 JUDGE BARATTA: : They have an existing
20 operating license application.

21 MS. JONES: : Yes, and we consider that to be
22 inactive. We are currently not reviewing their
23 operating license. We only looked at the request for
24 reinstatement, so our review was very limited.

25 JUDGE BARATTA: : What are the steps that

1 would be required for that to become active?

2 MS. JONES: : TVA would certainly have to let
3 us know if that's what they intend to do. Then we would
4 expect they would send us a letter advising us of what
5 approach they intend to take and that would likely
6 reactivate the process. But it would be purely based on
7 what TVA advises us.

8 JUDGE BARATTA: : You have heard they feel
9 they have to amend that license to incorporate the post
10 PMI requirements that are in the legislation.

11 MS. JONES: : Certainly, they have to amend
12 the application. And we would expect that.

13 JUDGE BARATTA: : At that time, are there any
14 regulations that would require them to update the SAR or
15 their environmental report to incorporate new
16 information with regard to seismicity and flooding?

17 MS. JONES: : There is a general regulation
18 50.55d that requires them to update the FSAR as far as
19 the safety side is concerned. And there is -- as far as
20 the environmental information is concerned, there is
21 51.95b that also requires them to update information
22 related to the original final environmental statement,
23 but that's only based on new and significant 157
24 information. If there is new and significant
25 information at that time, then they would be required to

1 update it at that point.

2 JUDGE BARATTA: : When they come in for this
3 update or amendment to their existing or inactive
4 operating license application, would the notice hearing
5 opportunity on that amendment be strictly limited to the
6 information of that amendment?

7 MS. JONES: : I cannot really say at this
8 point. My presumption would be that the license
9 application in its entirety would be put up for notice
10 for opportunity for hearing, but I can't say with
11 certainly since we're not at that point yet, but I
12 presume it to be.

13 JUDGE BARATTA: : For historical reference,
14 what was done?

15 JUDGE BOLLWERK: : And if TVA would like to
16 tell us what they did in Watts Bar? Did you amend or
17 put something new? You can probably find out the answer
18 to that.

19 MR. DOUGHERTY: : Mr. Chairman, if Attorney
20 Roth would like to address the board, we have no
21 objection.

22 MS. JONES: : Actually, I think I can address
23 that. As I understand it, in the Watts Bar case, it ¹⁵⁸was
24 left pretty much open. Everything was fair game in that
25 case. And as far as I know, there's nothing in the

1 provisions for notice for opportunity for hearing that
2 would limit that.

3 JUDGE BARATTA: : Thank you.

4 JUDGE BOLLWERK: : Do you know, did TVA amend
5 their application in that instance or did they submit a
6 new application?

7 MS. JONES: : Your Honor, I have been told it
8 was amended.

9 JUDGE BOLLWERK: : Judge Sager?

10 JUDGE SAGER: : Nothing here.

11 JUDGE BOLLWERK: : Anything further to add?

12 MS. JONES: : We're good.

13 JUDGE BOLLWERK: : Let's go back to
14 Mr. Dougherty then.

15 MR. DOUGHERTY: : Dougherty were. There is a
16 pattern that emerged and the TVA and staff, of six of
17 our contentions. First, for contention is admissible
18 because everything is outside the scope of the good
19 cause standard, even though the contentions deal with
20 economic feasibility of the power to be produced at the
21 plant. And secondly, every contention is filed either
22 too late or too soon. Some are too late because they
23 should have been raised back in the 1970s when the ~~CP~~^{CP}59
24 were issued, and the rest are offered too early and
25 should be addressed as part of the OL proceeding.

1 We don't know in advance which way it will be
2 challenged. We would have guessed our contention
3 regarding the site suitability and flooding would not be
4 characterized as too late because it was addressed in
5 1974, but instead TVA contends it is here too early and
6 these things should be evaluated in the operating
7 license stage.

8 Now, as a general principle, we agree that
9 certain types of safety issues are properly deferred to
10 the OL stage. Now, the kinds of issues that strike me
11 as appropriate for that would be something like
12 emergency evacuation, if there is a problem getting away
13 people away from the plant, if there is a environmental
14 problem, say a thermal discharge, to be addressed in the
15 operating license through a power limitation that
16 strikes me as appropriate.

17 But here we have the situation where the plant
18 may be unsuitable, a site unsuitable because of the risk
19 of flooding. And if that's the case, it seems obvious
20 to us the time to address that is now. And that's what
21 NRC staff member Williams said, there is evidence that
22 the decisions were not only -- were, in fact, wrongly
23 addressed 300 years ago and there is new evidence ab~~160~~
24 there, and if some kind of response is necessary, it
25 will be either be to declare it unsuitable and abandon

1 it or construct it in a way that it is flood proof,
2 maybe it needs flood walls. I have no idea, but it
3 seems to involve construction, not operations.

4 And if that's the case, the time for this
5 panel to consider it is now, while we are considering
6 construction permit reinstatement. That concludes our
7 rebuttal.

8 JUDGE BOLLWERK: : Judge Baratta?

9 JUDGE BARATTA: : We have heard at the
10 operating license stage that they will have to provide
11 any impact of any new and significant information, and
12 it sounds like there may very well be some new and
13 significant information with the flooding, and we have
14 also heard that according to the deferred plant policy,
15 et cetera, as you move forward, they have to identify
16 the impact of that information on their design. So
17 would not that take care of what you are concerned with?

18 In other words, if they come in and say, okay,
19 we do have new and significant flood information and
20 therefore the sites not as good as we thought it was, we
21 have to do something, doesn't that address it?

22 MR. DOUGHERTY: : Well, If that something is
23 don't build it here, then there is nothing you can do at
24 this stage, well, that is a decision that has to be
25 made.

1 JUDGE BARATTA: : Operate and tear down and
2 redress.

3 MR. DOUGHERTY: : Is that the function of the
4 commissioner or this panel, is to let all the issues
5 rollover to the OL proceeding after spending \$10
6 billion, to say, sorry, can't operate. I think not. I
7 think under section 189 and under part 50, I think the
8 task is to ask the questions and come up with tested
9 answers and make sure the site is suitable, the flooding
10 isn't that much of a problem. That is all I can say.

11 It makes no sense to me to just roll it over
12 for five years and then say, sorry, bad site, you can't
13 operate. And as I pointed out, the probable or at least
14 one possible response to flooding is a design feature.
15 Why raise those issues at the separating license stage
16 that might require ring. Do it now while they evaluate
17 the SSCs and while reconstruction in some material way
18 is still a possibility.

19 JUDGE BOLLWERK: : Do any -- either of the
20 staff or the applicant, want to respond? There will be
21 an opportunity to respond.

22 MS. SUTTON: : Your Honor, I would like to add
23 that part 50 process here is a two-step licensing 162
24 process and to the extent the petitioners don't agree
25 with that process, which is obvious, you don't like the

1 process, perhaps the route is a petition for rulemaking
2 to change the rules.

3 JUDGE BOLLWERK: : Anything from the staff?

4 MS. JONES: : I think enough said.

5 MR. DOUGHERTY: : With all due respect, we
6 have not criticized the process, we love the process.
7 Our point is under two steps, construction issues are
8 raised in step one and operating issues raised in step
9 two, and you consider the issues we raise to be
10 construction issues and that's our point, not that the
11 process is flawed.

12 JUDGE BOLLWERK: : A reason they came up with
13 part 52 is because a lot of people were not happy with
14 the process.

15 MR. DOUGHERTY: : But that is not a reality.

16 JUDGE BOLLWERK: : Anything further? Judge
17 Baratta? Judge Sager?

18 JUDGE SAGER: : Nothing.

19 JUDGE BOLLWERK: : And now contention 8,
20 Bellefonte units one and two do not meet operating life
21 requirements.

22 MR. DOUGHERTY: : Section 50.49e5 says
23 equipment installed has to be tested in a fashion that
24 assures it will remain operational until the end of
25 useful life, and I will read from 50.49e5, agent:

1 equipment qualified by test must be reexamined by
2 natural or artificial accelerated aging to the installed
3 life condition. Now, when the tests were run and
4 satisfied at the time when the CPs were issued in 1974,
5 they were assuming this plant had a certain useful life,
6 and, frankly, I should know what it is, but I don't. It
7 was either 30 or 40 years. So they had to make sure
8 everything would hold up for 40 years. That was 36
9 years ago -- 36 years ago and now we have a series of
10 licensing proceedings.

11 I have been told they are looking at turning
12 the plant goes on, loading fuel and resuming commencing
13 operation in about 10 years. That will be 46 years from
14 official CP issuance, and if they operate for another
15 40, we are talking 96 years. So, we believe a
16 consequence of TVA brought on itself by delaying this
17 construction process so long and now trying to resume,
18 they cannot show the SSCs will operate effectively over
19 that period of time. So we are saying the burden should
20 be on TVA to prove that the equipment will operate as
21 required by 50.4095 to the end of its installed life.
22 That conclusions my opening remarks.

23 JUDGE BARATTA: : Nothing. 164

24 JUDGE SAGER: : Nothing here.

25 JUDGE BOLLWERK: : TVA.

1 MS. SUTTON: : In proposed contention 8,
2 petitioners repeat that TVA must conduct a new safety
3 analysis prior to the issuance or reinstate of
4 construction Bellefonte units one and two, but here
5 alleges that TVA has not provided critical research and
6 information on its aging equipment, or aging management
7 plan to deal with reliability and safety issues of
8 advanced age and end of installed life.

9 In support as you heard petitioners site 10
10 CFR 5049 concerning viable qualification of safety
11 electrical equipment and further evidences pier failure
12 to abide by the clear terms of March 2009 order, the
13 subject of this proposed contention, the purported
14 advanced age and end of installed life SSCs has no next
15 us to TVA's good cause justification for reinstatement
16 of the CPs, and accordingly, yet again must be rejected
17 as falling outside of scope of this proceeding pursuant
18 to 10 CFR f13.

19 In addition, the concern raised by petitioners
20 is unquestionably a post construction safety issue, not
21 subject to NRC review and findings in this CP
22 reinstatement proceeding. As the safety evaluation
23 makes clear, the NRC staff will review the detailed 165
24 design information and resolution of any safety issues
25 during the OL application review process, and if and

1 when TVA moves forward with an operating license
2 application.

3 Proposed contention 8 fails to raise material
4 issue or establish a genuine dispute contrary to section
5 2.309f16. This is another issue which may be more
6 appropriate for consideration in a part 50 operating
7 license proceeding, again, assuming that any such future
8 proposed contention fully meets the admissibility
9 requirements of section 2.309. Issues concerning the
10 age or as found conditions of SSCs at units one and two
11 will not litigable would to the extent necessary and
12 appropriate be evaluated by TVA and NRC through
13 applicable regulatory and licensing processes upon any
14 reactivation of construction.

15 For example, TVA's nuclear quality assurance
16 program or the NQAP, which we talked about earlier,
17 addressed equipment age. The NQAP makes clear TVA
18 controls prohibit deferred equipment, including aged,
19 degraded or outdated or obsolete equipment from being
20 used in nuclear safety related applications without
21 further evaluation and having been fully restored or
22 replaced.

23 Again, the adequacy of the NQAP is not 166
24 recognizable here. It could be the subject of either a
25 2206 petition or possibly an issue in the future OL

1 proceeding. In addition, section 3a7 of the deferred
2 plant policy statement describes the principle criteria
3 or bases upon which the NRC staff evaluates
4 acceptability of equipment upon reactivation of a plant
5 from deferred status. These include, for example,
6 reviews of the approved reservation and maintenance
7 programs as implemented to determine whether any SSCs
8 require special NRC attention during reactivation.

9 Finally, in accordance with 10 CFR part 50
10 and/or licensing basis commitments in the preliminary or
11 final safety analysis report, the PSAR or the FSAR, TVA
12 would need to comply with the design requirements
13 specified in NRC approved industry codes and standards,
14 including those governing environmental qualification of
15 electrical equipment important to safety. As noted in
16 SECKY 08004 is, which includes TVA's submittal of plans
17 for restoration of plans and equipment affected by the
18 suspense of preservation and maintenance activities.

19 As a result, if TVA decides to move forward in
20 an OL proceeding, as build condition of the plants would
21 be subject to NRC inspection regarding licensing
22 requirement. The foregoing considerations underscore
23 petitioner's failure to raise a genuine dispute on ~~167~~
24 of material law or fact in the context of this current
25 reinstatement proceeding. Issues related to the aiming

1 of previously installed plant equipment are not material
2 to the NRC's finding of good cause for reinstatement.
3 Moreover, such issues would be the subject of future NRC
4 technical reviews that are contingent upon TVA's unmade
5 decision to reactivate construction and seek NRC
6 operating licenses for both units one and two.

7 As such, they also would be more appropriate
8 for consideration either through the 2206 or through the
9 part 50 OL proceeding. For all of the reasons, this
10 proposed contention should be rejected.

11 JUDGE BARATTA: : In question.

12 JUDGE BOLLWERK: : Judge Baratta?

13 JUDGE BARATTA: : Nothing.

14 JUDGE BOLLWERK: : Judge Sager?

15 JUDGE SAGER: : Nothing here.

16 JUDGE BOLLWERK: : The response here is the
17 same as before. This is just not the right time.

18 MS. SUTTON: : That is correct, for all of the
19 reasons stated.

20 JUDGE BOLLWERK: : And now to the staff.

21 MS. JONES: : Our response is the same as
22 before. We don't think, and with a couple of
23 deviations, 50.495 applies more to operators and applicants
24 to applicants for operating licenses, but we would also
25 add that, and I think my colleagues mentioned this

1 earlier, that any equipment that's determined to be
2 unsatisfactory or is expired would be placed into a cap,
3 and any issues regarding aging, in the context in which
4 petitioners are bringing it up, that is something that
5 we would look at as part of our review of their final
6 design which would be submitted in the final safety
7 analysis report.

8 So we consider any issues regarding the faulty
9 equipment to be part of our technical review at this
10 point in time if TVA decides to pursue an operating
11 license application.

12 JUDGE BOLLWERK: : Is part of the plant
13 design, maybe I should -- Judge Baratta asked this type
14 of question, does the design of the facility provide a
15 list of the age of all the equipment? Do you know how
16 old it all is?

17 MS. JONES: : I don't have that information.

18 JUDGE BOLLWERK: : There is the possibility
19 you may not know how old some of it is?

20 MS. JONES: : We would expect for them to,
21 once they have investigated, whether or not they do,
22 whether or not this is equipment that is faulty or
23 expired we would expect for them to advise us of that¹⁶⁹
24 and we would pursue our normal process of in expecting
25 and reviewing information submitted to us at the

1 operating license application stage.

2 JUDGE BOLLWERK: : Does a plant like there put
3 you on a heightened concern about the age of equipment?

4 MS. JONES: : I can't necessarily speak to
5 that. It would be too much of an opinion and I don't
6 want to speak for the staff.

7 JUDGE BOLLWERK: : TVA want to say anything
8 about how you deal with something like this where you
9 have equipment, some of it 40 years or more?

10 MS. SUTTON: : We have records regarding
11 equipment age and furthermore as part of the processes
12 being discussed here TVA would have to requalify,
13 replace any sort of equipment to ensure that it ensures
14 its intended design function.

15 JUDGE BOLLWERK: : That's on an item by item
16 basis, I take it?

17 MS. SUTTON: : That's correct, Your Honor.

18 JUDGE BOLLWERK: : That includes all the
19 piping, whole components?

20 MS. SUTTON: : Yes, Your Honor.

21 JUDGE BOLLWERK: : All right. Cabling?

22 MS. SUTTON: : Yes, Your Honor.

23 JUDGE BOLLWERK: : Anything further? Judge 170
24 Sager? Judge Baratta?

25 JUDGE SAGER: : No.

1 JUDGE BOLLWERK: : Let me turn, then, to the
2 petitioners, then. Mr. Dougherty.

3 MR. DOUGHERTY: : We believe there is a whole
4 constellation of issues best raised and adjudicated in
5 the context of operating license proceeding and I
6 mentioned some of those like emergency evacuation, power
7 levels, staffing plans, and we are not attempting to
8 raise such issues at this stage. But there are other
9 issues which are inherently raised during the
10 consideration of the construction of the plant.
11 Concrete cracks. This site is in a flood zone, a lot of
12 different information on flooding on the site. The
13 rebar is rusting. Now, at some point TVA had to
14 demonstrate the rebar would meet spec for a 40-year
15 period. But that 40-year period expires in four years.
16 Can it meet spec for a 96-year period? That's the
17 question.

18 And we think it is inappropriate to defer
19 resolution of those questions until the operating
20 license. If the rebar isn't going to make it, let's not
21 invite them to spend billions more adding new equipment,
22 to, then, tell them that they cannot operate the plant.
23 If the rebar needs to be repaired or replaced, now is⁷¹
24 the time to do it, not the operating license stage.

25 So, we would say with respect to the issues

1 that we've raised, it is the CP stage that is
2 appropriate, not the OL stage. Thank you.

3 JUDGE BOLLWERK: : Anything?

4 JUDGE BARATTA: : No.

5 JUDGE BOLLWERK: : Judge Sager?

6 JUDGE SAGER: : Nothing.

7 JUDGE BOLLWERK: : And now the final
8 contention, number 9, impacts on aquatic sources,
9 including fish and mussels of the Tennessee River.

10 MR. DOUGHERTY: : Thank you, Your Honor. Over
11 time, environmental conditions change over time, and
12 since the construction permits were issued in 1974
13 environmental conditions have changed. I'm sure
14 population patterns around the plant have changed. One
15 can make a lot of arguments about new analyses that need
16 to be conducted in order to account for a changed
17 circumstance around the plant. We are not making those
18 contentions.

19 The conditions we're advancing here is that
20 scientific evidence collected by our expert witness,
21 Shawn Young, shows that since the initial ecological
22 reviews in the Tennessee River were conducted 40 years
23 ago, ecological conditions have changed substantially.
24 The populations of many of the indigenous species have
25 shown dramatic declines. This may be due partly because

1 of climate changes, but things are changed. There are a
2 flub -- numbers operations who affect the water flow and
3 this has to do with how the plant is operated in terms
4 of the use of water.

5 So, with Dr. Young's declaration and the
6 authorities he cites there, we would like to make TVA
7 demonstrate that this site is compatible and will not
8 lead to undue harm to the aquatic ecosystems in the
9 river. And we trust that Mr. Young's input into this
10 proceeding will educate the panel this is a way we can
11 make a finding on this contention. That concludes my
12 presentation. Thank you.

13 JUDGE BOLLWERK: : All right.

14 JUDGE BARATTA: : Nothing.

15 JUDGE BOLLWERK: : Judge Sager?

16 JUDGE SAGER: : Nothing here.

17 JUDGE BOLLWERK: : I spent a week with Dr.
18 Young in March of last year with Dr. Young and I know he
19 has a lot to say about matters of aquatics.

20 MR. DOUGHERTY: : Most of it, I don't
21 understand.

22 JUDGE BOLLWERK: : Hopefully, we issued an
23 opinion that dealt with it. Now to TVA. 173

24 MR. VIGLIUCCI: : Thank you, Mr. Chairman.
25 I'm not sure I fully understand Mr. Dougherty's argument

1 suggesting that he is not urging here that there have
2 been any changes that need to be considered now, but his
3 expert says there are changes that need to be considered
4 now. In fact, contrary to what was suggested earlier,
5 we have suggested that in a way these contentions are
6 too late, and we're contending, at the same time, they
7 are, perhaps, too early.

8 There was extensive consideration of the
9 environmental impacts of the proposed construction of
10 Bellefonte units one and two some years ago. This is
11 simply not the occasion in the context of a construction
12 permit reinstatement proceeding to revisit those.
13 As noted earlier, an occasion to deal with these issues
14 will present itself in the event TVA goes forward with
15 the operating license application in that context should
16 an admissible contention be proposed at that time.

17 Proposed contention 9 essentially consists of
18 five subparts. The first, at least nominally, suggests
19 that it has to do with the reinstatement of the
20 construction permits and resumption of construction, but
21 notably as an operation of units one and two on aquatic
22 resources. It suggests no data was provided in support
23 of the rationale for a finding of no significant impact.
24 Petitioner notes, though, that the majority of
25 construction activities have already occurred and the

1 impacts have been assessed and documented in the
2 original FES. Excuse me, that statement was made by the
3 staff and it's environmentalist has been upped by
4 petitioners. And that statement can be referred in 74
5 Fed reg at 9307 and 9309 which was published on March
6 3rd.

7 Proposed contention b goes on to the subject
8 that the analysis four units he and four -- for units
9 he, and four does not adequately address potential
10 impacts operating two or four additional nuclear reactor
11 units on fish and mussels in the Tennessee River, and 9c
12 suggests the analysis does not adequately address the
13 impacts to increase water intake and increased thermal
14 discharge on fish and mussels in the vicinity of the
15 Bellefonte units. And 9d addressed thermal and check
16 discharges, and 9e suggests that TVA has used a biased
17 rating system to justify certain of its analyses, and
18 has pointed out the declaration of Shawn Young is relied
19 on in support of the contentions.

20 But much like the other proposed contention
21 nine, again, lacks adequate support and fails to raise a
22 genuine issue regarding any finding that must be made in
23 the context of this proceeding, this construction per 175 t
24 proceeding. Despite the words that they seek to
25 question the adequacy of the environmental assessment

1 regarding the resumption of construction, I think it can
2 be said of the petition and the declaration they ignored
3 the NRC early environmental statement and addressed only
4 purported impacts associated with the operation of the
5 facility and in particular, the cumulative impacts of
6 operating four units.

7 The impacts have been resulted from operation
8 of Bellefonte units one and two are clearly beyond the
9 scope of this narrowly focused proceeding. Moreover,
10 like an earlier contention, this one seeks to raise
11 essentially the same issue as the board admitted, in the
12 ongoing Bellefonte units three and four proceeding and
13 there I referred to contention 8, which I believe is
14 NEPA, consideration of impacts of future operation is a
15 potentially admissible issue in the contexts of combined
16 license proceeding and a COLA proceeding related to
17 Bellefonte units three and foyer but not in the context
18 of a construction permit such as we are here concerned
19 about, and for that reason, should be rejected.

20 Again, finally, and to respond to the board's
21 question, to the extent an admissible contention could
22 be proffered, it would be in the context of the issuance
23 of operating licenses should TVA pursue that course ~~176~~
24 the end. Thank you.

25 JUDGE BOLLWERK: : Any questions? Judge

1 Baratta, any questions?

2 JUDGE BARATTA: : No.

3 JUDGE BOLLWERK: : Judge Sager?

4 JUDGE SAGER: : No questions.

5 JUDGE BOLLWERK: : I heard the same responses,
6 which is this is an OL issue.

7 MR. VIGLIUCCI: : That's correct.

8 JUDGE BOLLWERK: : And now let's turn to the
9 staff.

10 MS. JONES: : Judge, for the sake of not being
11 repetitious, I will just make two points but I suspect I
12 will be repetitious. That is, following what he just
13 said, these are issues that are more appropriately
14 raised at operating license application review stage, or
15 TVA determines it wants to proceed in that direction.
16 And the other point I want to make is that the issues
17 raised in contention 9 were based on the environmental
18 reports for units three and four, and so petitioners
19 hadn't really conveyed a real case for why and how that
20 information would contradict the information we used
21 here for the request for reinstatement.

22 The request for reinstatement is limited to
23 completion of construction for units one and two and 177
24 does not encompass operational issues which is exactly
25 what contention 9 seems to be concerned with.

1 JUDGE BOLLWERK: : Anything further?

2 MS. JONES: : No.

3 JUDGE BARATTA: : No.

4 JUDGE SAGER: : Nothing here.

5 JUDGE BOLLWERK: : Let me go back to
6 Mr. Dougherty.

7 MR. DOUGHERTY: : Your Honor, I am not
8 familiar to deal with this, but it is my understanding
9 that the issues we are presenting in the contention were
10 issued that were resolved at the CP stage when the CPs
11 were issued 35 years ago. If that is the case, we are
12 saying that this one, in particular, deserves to be
13 revisited because of the new information and the change
14 in environmental circumstances. But I'm also going to
15 say that if this is the first time these issues have
16 ever been raised or considered by the staff, they should
17 be addressed in the OL.

18 JUDGE BOLLWERK: : Thank you.

19 JUDGE BARATTA: : Nothing.

20 JUDGE SAGER: : Nothing here.

21 JUDGE BOLLWERK: : That, then, we have been
22 through the seven contentions and well as the question
23 of good cause, generally, which concludes what the b178
24 had an interest in terms of hearing an argument from the
25 parties. In terms of the argument, we would like to

1 express the board's appreciation to all of you.
2 Mr. Dougherty, you said you have not done this in a
3 while, but you sound like you have been up to speed as
4 far as I could tell. So we appreciate your efforts for
5 coming in on the crunches, a small physical problem, but
6 we do appreciate you coming and the other counsel
7 regarding providing us with arguments.

8 And now a couple of things for you all to
9 think about. This case obviously is up in the board's
10 hands. Given the arguments we have heard, we have to
11 make a decision about standing issues and the
12 admissibility of contentions. That we will do this due
13 course. We have a general provision in the rules that
14 says 45 days from the time the petitioner's refile is
15 filed and we make our decision or tell the commission
16 what the issue -- what the problem is, and we will do
17 one or the other. So, in terms of, however, for you all
18 going forward, some things to think about and, again,
19 this is assuming the contention is admitted and the
20 board has not made decisions about what contentions may
21 or may not come in, think about in setting a section
22 2.332b schedule. The board at this point would be
23 operating under the presumption that a merits 179
24 determination regarding admitted issues need not make
25 issue of satisfy, staff or environment review unlike the

1 licensing cases where we awaiting Bellefonte, the COL,
2 or Vogtle, we are waiting staff review documents to move
3 forward on the merits of the contentions, these
4 contentions and these that were admitted, basically, we
5 would be good to go, I think, moving forward in terms of
6 the merits.

7 As such, relative to any discussion that might
8 occur regarding official schedule for the proceeding, we
9 ask you consider carefully the length of time you
10 require for discovery authorized under the agency rules
11 of practice and, whether summary disposition is
12 appropriate relative to admitted contention and how much
13 time is needed to prepare for and conducts an
14 evidentiary hearing regarding the contention. We are
15 some a different situation if the contention is
16 admitted, we are in some of the other licensing cases
17 where we waiting for something to happen. I don't think
18 we are waiting for anything further to happen. This
19 case could move forward with the merits relatively
20 promptly, to whatever discovery provisions would apply.

21 Also, assuming the contention is admitted, the
22 parties should be aware that discovery provisions under
23 section 2.33 including the need for the staff to provide
24 a hearing file would be activated regardless of whether
25 there is a board order or party discovery assuming

1 contention is admitted. And the party may wish to
2 discuss whether they want to prepare on discovery, and
3 produce privileged laws or waive such laws as for
4 instance was done in the bell fonts combine licensed
5 proceeding.

6 Finally, with respect to the procedures
7 potentially going forward given the proceeding, the
8 board will assume we will not receive requests for
9 protective orders but if that is not the case, you will
10 need to discuss that and let us know.

11 Those are just some heads up assuming we were
12 to move forward and admit a contention, and I am not
13 saying that will or won't happen, but something for you
14 to think about as we go forward. At this point, let me
15 see if anything any of the parties want to bring to the
16 board's attention relative to what you have already or
17 any questions on what I have just said.

18 MR. DOUGHERTY: : For two minutes. What is
19 notable about there case is both the dissenting opinion
20 of Mr. Williams on the staff and the repeated and very
21 strong dissents articulated by Chairman Jaczko and I
22 would like you to pay attention to these people who know
23 what they are talking about making valid, and there ~~181~~
24 list in some agencies to brush claims of whistleblowers
25 under the rug and it is income went to read this

1 carefully. What Williams called for was a robust
2 process having been on the inside, being familiar with
3 the facts, he's seen issues that in his view, need to be
4 eliminated and the only way to do that is in
5 adjudicatory proceeding like this, not the kind of thing
6 where we say, the staff will work it out with TVA.

7 We believe, of course, we have a right under
8 the act to adjudicatory proceeding on that. The other
9 thing that strikes us in many ways we are in the same
10 position in this proceeding as we are in the units he
11 and four COL proceeding, is that we don't though what
12 TVA wants to do. And in many respects, what they want
13 to do is going to bear on the contentions. For example,
14 if they are thermal discharges, it matters whether they
15 will resume construction on one or two, or zero or
16 builds a new one.

17 So, in many ways the facts they have not
18 announced what they plan to do complicates our job
19 immeasurably, and I guess it is unusual for any board to
20 consider a proposal, it agencies will, because we don't
21 have numbers associated with it and we tonight know if
22 the company wants to do it so I suggest a way of
23 proceeding might be to answer the most important ~~hardest~~^{hardest}
24 question in front of us right now which is, what is a
25 good cause standard and what, really, is TVA's burden of

1 going forward with the staff and our burden as party --
2 as petitioners, and if we can get an answer the proper
3 resolution of the other factual and environmental
4 contentions will be sharpened considerably.

5 JUDGE BOLLWERK: : Thank you, sir. Anything
6 that TVA or the staff wants to say in response to that?

7 MR. VIGLIUCCI: : We think the standard for
8 good cause is aptly defined in the commission's
9 precedent as well as in commission policy statements and
10 we do not see any need for further discussion on those
11 issues. We do have a question with respect to whether
12 the board this morning, excuse me, this afternoon,
13 intends to hear anything further with respect to
14 standing or with respect to the procedures to be
15 followed in this proceeding.

16 JUDGE BOLLWERK: : I don't think those are
17 issues were necessarily raised. I think we're fine with
18 those. We don't need to have anything further on those.
19 And now to the staff, anything the staff wants to say?

20 MS. JONES: : We have nothing further.

21 MR. DOUGHERTY: : Nothing further.

22 JUDGE BOLLWERK: : At this point, let me -- a
23 couple of other administration matters, and, again, 183
24 anyone that happened to continue to be watching the
25 proceeding over the webstreaming, if you have any

1 comments on the webstream, how it worked for you, how
2 you see any problems, issues, again, the e-mail address
3 would be webstreammaster.resource.NRC and how the
4 proceeding came across in terms of ability to watch this
5 notwithstanding the fact we were to have access to the
6 proceeding notwithstanding we were in Rockville, rather
7 than being in the Alabama area. So, we appreciate
8 hearing from you one way or the other if you have, if
9 you have any comment.

10 The SLAP staff, Andy Wilkie, Matt Cuthcin and
11 Government Solutions, the contracting staff, we
12 appreciate putting together the video conferencing and
13 web streaming, and our I.T. specialist Joe Deucher and
14 the web streaming folks we are dependent on. And
15 everything went smoothly as far as I could tell, so I
16 appreciate their efforts, and law clerk and SherVerne
17 Cloyd and the administrative staff important in setting
18 this process up and getting it forward, and Lorraine
19 Carter and our real time reporter, and our person here,
20 this person. It is never an easy thing to keep up with
21 the rapid conversation that goes on between the lawyers
22 and we do appreciate the realtime efforts you made in
23 terms of the real time court reporting for the 184
24 webstreaming feed we have, which is very important for a
25 lot of people to access it and understand what is going

1 on.

2 Finally, I make mention of something that I
3 guess was clear to the applicant when they came in but
4 may not have been clear to some of the others, over the
5 weekend, when I came in at 1:00 on Saturday, we had a
6 flood in the hall right over here and, in fact, we had a
7 water down table that sprung a leak and caused a cascade
8 of water down the stairway, fortunately, and also, not
9 necessarily into this room but into the hall and into
10 the applicant's conference room and the NRC staff and
11 contractor staff dried it out and got it up and
12 operating this morning so we were able to use the room
13 as well as conduct this proceeding, and I was concerned
14 to find the water all over the place but it worked out
15 that they did a terrific job getting us up and operating
16 this morning. So, I do appreciate that. Thank you to
17 them for staying on top of that.

18 At this point, Judge Baratta, anything you
19 want to say?

20 JUDGE BARATTA: : No.

21 JUDGE SAGER: : Nothing here.

22 JUDGE BOLLWERK: : We appreciate the efforts
23 of counsel. I found the arguments very illuminating¹⁸⁵
24 and you clearly spent a lot of time putting these
25 together and, again, Mr. Dougherty, you are getting up

1 to speed. What proceeding were you in years ago?

2 MR. DOUGHERTY: : In 1979.

3 JUDGE BOLLWERK: : Not around as long as
4 Mr. Chandler has been around. We appreciate your
5 efforts and of all counsel today, and we are taking them
6 under consideration and we issue a decision hopefully
7 within the next about 30 days or thereabouts. Thank you
8 very much.

9 We stand adjourned.

10 Whereupon, the proceedings were concluded)

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