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 Commmission

Atomic Safety and Licensing Board Panel

Judge G. Paul Bollwerk, III, Chairman

Judge Anthony J. Baratta

Judge William W. Sager

APPEARANCES

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

For the TVA:
Edward J. Vigluicci, Esq.
  Kathryn M. Sutton, Esq.
Lawrence Chandler, Esq.

For the NRC staff:

David E. Roth, Esq.
Christine Jochim Boote, Esq.
Andrea Jones, Esq.

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

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

8 >> (Petitioners arrive)

9 MR. DOUGHERTY: Yes, sir.

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

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

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

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

20 This prehearing conference has been convened
21 as a result of the response of several groups including
22 the Blue Ridge Environmental Defense League and the
23 Bellefonte Efficiency and Sustainability Chapter and
24 the Southern Alliance federal Register on March 13,
25 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 initially issued in 1974 that authorized TVA to
6 construct two Bacock and Wilcox pressurized water
7 reactors on its Bellefonte nuclear facility site located
8 some 6 miles northeast of Scottsboro, Alabama.
9 Such a reinstatement request by TVA was
10 necessary because after deferring completion of units 1
11 and 2 in 1998, with the units 88 percent and 59 percent
12 finished, respectively, in 2006, TVA requested and NRC
13 granted a withdrawal of the CPs for unit, 1 and 2.
14 Joint petitioners May 2009 hearing request
15 regarding the TVA CPA reinstatement matter first came
16 before this Board in January, 2010.
17 Prior to that time, it was under consideration
18 by the Commission in connection with the admissibility
19 of the first two of their contentions challenging the
20 TVA reistatement request both of which involved the
21 issue whether the agency had the authority to grant
22 such a CP reinstatement request.
23 In January, 7th 2010 ruling, CLI-10-6, a
24 majority of the Commission ruled that such authority
25 did exist and sent the case to the Atomic Safety and

1 Licensing Board panel for further proceedings, including
2 considering ruling upon the questions of joint
3 petitioner standing and the admissibility of their other
4 seven contentions.
5 Subsequently on January 15, 2010, the
6 Licensing board Panel, chief administrative judge issued
7 a notice designating this three member licensing Board
8 to conduct the proceeding.
9 By way of background regarding the NRC
10 licensing process as it applies to this proceeding, most
11 of the recent discourse regarding nuclear power plant
12 licensing has concerned the combined license or COL
13 process under Part 52 of the agency's regulations.
14 If issued, a COL provides authorization from
15 the NRC both to construct and with conditions operate a
16 nuclear power plant at a specific site in accordance
17 with agency regulations.
18 Such a licensing process is in fact ongoing in
19 connection with Bellefonte units 3 and 4. Two AP1000
20 facilities, the TVA has proposed constructing and
21 operating on the same site as Bellefonte units 1 and 2,
22 the subject of this proceeding.
23 The COL process can be contrasted with the
24 licensing process that potentially would be applicable
25 to Bellefonte Units 1 and 2 which would be the process

1 used for the licensing of the 100 plus commercial
2 nuclear power plants currently operating in the United
3 States.
4 Pursuant to Part 50 of the Agency's
5 regulations, applicants for those facilities were
6 required to apply for and obtain separate authorization
7 to construct and then, to operate a reactor.
8 Thus, in the case of Bellefonte, 1 and 2, if
9 the TVA obtains reinstating construction permits, TVA
10 would be required to procure a separate operating
11 license for each facility.
12 As would be the case under the one step Part
13 52, cobmined license regime or prior to the agency
14 issuing a Part 50 operating license, in connection with
15 the TVA to reinstate the Part 50 construction permits
16 for Bellefonte Units, 1 and 2, the NRC staff which is
17 one of the participants before us today had the
18 responsibility of completing safety and environmental
19 reviews of the TVA request in accordance with among
20 other applicable provisions of the Atomic Energy Act,
21 NRC regulations and the National Environmental Policy
22 Act or and NEPA.
23 At the same, The Atomic Energy Act
24 regulations, provided an opportunity for interested
25 stakeholders including individual members of the public

1 public interest groups, other organizations and
2 governmental entities including state and local
3 governmental bodies and Native American tribes seeking
4 a hearing regarding a TVA reinstatement request in which
5 they could contest that request.
6 And with respect to the conduct of the
7 adjudicatory process, as independent administrative
8 judge appointed by the Commission to serve as a member
9 of the Atomic Safety and Licensing Board, this three
10 member licensing Board has been designated to preside
11 over any proceeding regarding contested matters raised
12 in joint petitioner hearing requests.
13 The panel's administrative judges do not work
14 for or with the NRC staff relative to the staff's
15 license application review.
16 Rather, we are charged with deciding whether
17 the issues proffered by those requesting a hearing such
18 as joint petitioners are admissible and for those issues
19 we find litigable making a determination regarding their
20 subsequent validity in terms of the grant, conditioning
21 or denial of the requested licensing authorization.
22 Our decisions on hearing matters generally are
23 subject to review, first by the Commission as the agency
24 Supreme Court and then, by the federal courts including
25 the inappropriateness of the Supreme Court of the United

1 States.
2 Relative to the specific matters before us
3 today in this initial prehearing conference, we will
4 hear participant's oral arguments first on the matter of
5 the application of the Good Cause Standard of Atomic
6 Energy, Section 185(a) in determining whether the TVA
7 reinstatement request can be granted.
8 Then, for the balance of today's prehearing
9 conference, the participants will have an opportunity to
10 make oral presentations on the question, whether the
11 remaining seven contentions posited by joint petitioners
12 and contesting the adequacy of certain aspects of the
13 TVA CP reinstatement request and the staff's review of
14 that request are legally sufficient to be admitted as
15 litigable issues in this proceeding.
16 Before we begin hearing the petitioners
17 presentations on these matters, I would like to
18 introduce the Board members.
19 To my right is associate chief administrative
20 judge, technical, Anthony Baratta. Dr. Baratta is a
21 nuclear engineer and a full-time member of the Atomic
22 Safety and Licensing Board Panel.
23 Participating via video conference today is
24 Dr. William Sager.
25 Judge Sager, an oceanographer geo-scientist is

1 a part-time member of the panel.
2 My name is Paul Bollwerk and I'm an attorney
3 and Chairman of the licensing board.
4 At this point, I would like to have counsel
5 for the various participants, identify themselves for
6 the record. Start with the joint petitioners, then move
7 to TVA and finally to the NRC staff. Mr. Dougherty, if
8 you would, please.
9 >> MR. DOUGHERTY: Good morning, Your Honor,
10 James B. Dougherty for the petitioners.
11 >> JUDGE BOLLWERK: Would you like to
12 introduce the gentleman at the table?
13 >> MR. DOUGHERTY: Oh, I'm sorry, yes. At
14 my right is Louis Zeller, Executive Director of my
15 client, BREDL, Blue Ridge Environmental Defense League.
16 >> JUDGE BOLLWERK: Thank you, sir. Good
17 morning Mr. Zeller.
18 >> MR. ZELLER: Good morning.
19 MS. SUTTON: Good morning, Your Honor. My
20 Name is Kathryn Sutton. I'm a partner in the law firm
21 of Morgan, Lewis & Bockius. I'm here today representing
22 the Tennessee Valley Authority and I will allow the two
23 gentlemen that are here with me to introduce themselves.
24 >> MR. CHANDLER: My name is Lawrence
25 Chandler. I'm with the firm of Morgan Lewis & Bockius

1 and also here on behalf of Tennessee Valley Authority.
2 >> MR. VIGLUICCI: My name is Edward
3 Vigluicci. I'm with the Tennessee Valley Authority, the
4 Office of the General Counsel.
5 >> JUDGE BOLLWERK: All right, thank you
6 gentlemen.
7 NRC staff, please?
8 >> MS. JONES: Andrea Jones for the NRC staff.
9 >> MS. BOOTE: Good morning. I am Christian
10 Boote for the NRC staff.
11 >>> MR. ROTH: David Roth, NRC staff.
12 >> JUDGE BOLLWERK: All right, thank you.
13 Let's wait one second. We will do that.
14 As my previous comments indicated, during
15 today's conference, we will be entertaining
16 presentations from these participants regarding the
17 good cause and contention admission matters outlined
18 previously.
19 At some point in the future, however, if any
20 contentions are admitted in accordance with Section
21 2.315 (a) of Title 10 of the Code of Federal
22 Regulations, the Board will issue a hearing notice that
23 among other things may indicate that members of the
24 public will be afforded an opportunity to provide as
25 appropriate, oral limited appearance statements setting

1 forth their views concerning the CP reinstatement for
2 Bellefonte Units, 1 and 2.
3 In that issuance or subsequent notice, the
4 Board will outline the times, places and conditions of
5 participation relative to any opportunity for oral
6 limited appearance statements.
7 In the interim, as the Board noted in its
8 February 18, 2010 issuance in this case, any member of
9 the public can submit a written limited appearance
10 statement providing his or her views regarding issues
11 this proceeding.
12 Those written statements may be sent in a time
13 by regular mail to the Office of the Secretary, U.S.
14 Nuclear Regulatory Commission, Washington DC, zip code,
15 20555-0001, attention, to the Rulemakings and
16 Adjudication staff.
17 Or by e-mail to Hearingdocket -- that's all
18 one word, HEARINGDOCKET@ NRC.G0V.
19 A copy of the statement also should be
20 provided to me as the Chairman of this Atomic Safety
21 Licensing Board by sending regular mail to my attention
22 as the Atomic Safety and Licensing board Panel, mail
23 stop T-3F23 U.S. Nuclear Regulatory Commission,
24 Washington DC, same zip code, 20555-0001, or by e-mail
25 to Paul.Bollwerk -- B as in boy O-L-L-W-E-R-K-- at

1 NRC.gov.
2 And again, this submission information is
3 provided in the Board's February 18, 2010 issuance that
4 is available under the Reactors, Material and other
5 hearings portion of the agency's electronic hearing
6 docket which can be found under the hearings and
7 licensing portion of the electronic reading room tab on
8 the Agency's home page which is at www.nrc.gov.
9 With these limited appearance statements are
10 an opportunity for those that do not wish to seek party
11 status in this proceeding, provide their views regarding
12 the substantive issues before the Board. While these
13 limited appearance statements provide an opportunity to
14 provide -- regarding matters before the Board, the
15 Licensing Board panel would also be interested in
16 hearing from anyone who might be watching this
17 proceeding via web streaming about their experience with
18 accessing and viewing the webcast.
19 To the extent anyone viewing this proceeding
20 via the internet has comments regarding the technical
21 aspects of the webcast or its efficacy as a tool for
22 providing for broader public access to the adjudicatory
23 hearing process regardless of the actual hearing
24 location, those comments can be directed by e-mail to
25 webstreammaster, that's all one word,

1 webstreammaster.resource@NRC.gov.
2 This address is also on the bottom of the web
3 page that provides access to today's web stream session.
4 I would note also that in addition to the
5 availability of this proceeding via the web for live
6 viewing, a verbatim transcript will be available for
7 viewing and download within seven days in the electric
8 hearing docket on the NRC website.
9 Additionally, video of this session will be
10 archived for 90 days under the same webstreaming link
11 affording live access to today's session.
12 Returning to the matter before the Board
13 today, with respect to the order of presentation by the
14 participants of this prehearing conference, in our
15 February 18 Order, the outline is scheduled to afford an
16 opportunity with the participants to address various
17 contested matters now before the Board.
18 We would intend to follow that schedule as
19 closely as possible in terms of the issues in the
20 allocated time for argument.
21 In that regard, we requested before starting
22 on an issue, joint petitioners have been afforded an
23 opportunity for initial argument and rebuttal, their
24 counsel should indicate how much of the joint
25 petitioners total time allocation for the issue, he or

1 she wishes to reserve for rebuttal.
2 For the end of the allocated argument time,
3 the Board will be providing the participant counsel or
4 representative with notice of the need to finish his
5 presentation.
6 Also, as we noted in our February 18 issuance
7 making their arguments, the petitioners should bear in
8 mind, we have read their pleadings and they should focus
9 their presentation on the critical points of controversy
10 as those that have emerged as a result of the various
11 participant filings.
12 Finally, at some juncture, we would like to
13 have a brief discussion regarding some of the
14 administrative details involved in this proceedings.
15 And relative to administrative matters, I would note
16 this is my cell phone.
17 I have now turned it off, sticking it in my
18 pocket and I'm not going to turn it on again until we
19 are in recess.
20 I would request that everyone else do the same
21 thing with his or her cell phone or put it on vibrate.
22 But if you do put your phone on vibrate and it
23 goes off during the session, we ask before you answer
24 it, you leave the room and have your conversation.
25 We appreciate everyone abiding by this

1 protocol at any time this prehearing conference is in
2 session.
3 Unless participants have anything at this
4 point they need to bring to the Board's attention, let's
5 begin with the Joint Petitioners presentation regarding
6 issue of the application of the Good Cause Standard and
7 Atomic Energy Section 185 (a). And let me find out
8 first how you would like to allocate the ten minutes
9 you've been afforded in terms of the initial argument
10 and rebuttal?
11 >> MR. DOUGHERTY: Yes, thank you.
12 I would like to take seven minutes of the
13 initial ten minutes we've been allocated for my opening
14 statement and reserve three minutes for rebuttal.
15 >> JUDGE BOLLWERK: All right. Let me just
16 find out from the staff and the applicant how they are
17 going to divide their time.
18 MS. SUTTON: We will divide it evenly, Your
19 Honor, five minutes each.
20 >> JUDGE BOLLWERK: All right. Before you
21 start, one point I guess is important, in CLI-10-6 after
22 indicating at page 10 of the slip opinion that relative
23 to TVA CP reinstatement request, Section 185 of the
24 Atomic Energy Act was the only arguably, relevant ADA
25 provision, that at page 19 of the slip opinion, the

1 Commission stated, "once the Licensing Board is
2 convened, it will have to decide in the first instance
3 whether petitioners have established standing and have
4 raised admissible issues and if so, given their claims,
5 whether reinstatement on the particular facts presented
6 here is lawful and proper."
7 That is, whether there is good cause for
8 reinstatement. That is sort of the background obviously
9 to what the Commission said on this subject.
10 I know there was some statements in some of
11 the filings that were -- from the applicant and staff
12 relative to your reply brief indicating that you were
13 trying to somehow contest that Commission statement.
14 And obviously, this Board cannot change what the
15 Commission has said.
16 So in making your good cause argument, I would
17 like you to do it with that background and against that
18 background.
19 >> MR. DOUGHERTY: That's what I intend to do,
20 Your Honor.
21 >> JUDGE BOLLWERK: All right, thank you.
22
23 >> MR. DOUGHERTY: First, I would like to say
24 that I'm new to this proceedings of course and
25 therefore, somewhat unfamiliar with the file. And it's

1 actually been 25 years since I've been involved in a NRC
2 proceeding in any capacity so the laws and rules have
3 changed somewhat. For that and medical reasons, I gave
4 a brief consideration to seeking postponement of this
5 hearing but ultimately decided not to inconvenience all
6 these people and instead to make a disclaimer that at
7 the beginning of my remarks that if I say anything that
8 is unusually boneheaded, then I will reserve the right
9 later to disavow the statement.
10 >> JUDGE BOLLWERK: All right, appreciate your
11 candor.
12 >> MR. DOUGHERTY: I certainly don't think it
13 is our role to contest anything the Commission has said
14 but I do think it must be said that the Good Cause
15 Standard that's been laid out by the Commission is
16 utterly unclear.
17 The two word phrase finds no grounding
18 anywhere in the statute that the Commission said that
19 Section 185 is arguably relevant but it is only at
20 most, arguably relevant. And if you look for the
21 language to appear anywhere else in the statute, you
22 won't find it, that's true. But if you look at 185,
23 the Good Cause Standard is raised chiefly regarding
24 situations where CP has expired and the applicant has
25 sought reinstatement. Well, we don't think that fits

1 this circumstance even closer.
2 In fact, as most attorneys will know, the
3 basic concept of good cause standard is typically
4 applied in situations where a party has violated some
5 stricture or requirement, either having submitted a
6 pleading on time or having a late file contention or
7 even in the statute and regulations where a CP holder
8 has failed to construct a plant on time, you go to the
9 tribunal hat in hand and say, here is the good cause why
10 we didn't do what we were supposed to do.
11 But if you apply that framework to what we
12 have here, it doesn't apply and no one including
13 petitioners are contending that TVA was guilty of any
14 bad conduct or that they violated any requirement or
15 any deadlines. They simply surrendered their permit,
16 walked away from the plant and now they have come back.
17 So the idea of trying to fill this into a
18 rubic is good cause is very confusing and odd. Both the
19 staff and TVA have pointed to the Commission decision in
20 the Washington Power case cited in Seabrook and Comanche
21 Peak in which they have laid out this two part test in
22 the context of extending construction permits. But on
23 its face, the two part test doesn't apply here.
24 Part one of that two part test is whether
25 there is traceability between the missing of the

1 deadline and the company's behavior.
2 That doesn't seem to apply here. And
3 secondly, the second part of that test requires a
4 showing of dilatory conduct. And again, there's been no
5 allegation in here that anything TVA did was dilatory.
6 So attempting to cram all of this into that
7 standard is not going to help the panel or any of the
8 parties.
9 We think that reinstating the construction
10 permit is essentially the same thing as issuing a
11 construction permit especially under these circumstances
12 where the applicant walked away from the plant, where
13 here you have evidence on the record that not only were
14 the lights turned out but in fact, millions of dollars
15 of equipment was cannibalized essentially, physically
16 removed, even sold or redistributed.
17 So -- and as we will explain perhaps when we
18 get to our contention on quality assurance, where the
19 applicant walked away from the plant, comes back some
20 number of years later. What you're really doing is
21 issuing a CP in the first instance. We think that
22 should be the standard that applies here, the iminicals
23 of the common defense of security and consistent with
24 the health and safety of the public.
25 That makes -- that is made clear when you

1 look at the rules regarding contentions.
2 2.309 says that petitioner contentions must --
3 I need to read this one more second. The contentions
4 must be material to the findings that the NRC must make.
5 But again, we don't know what findings those
6 are.
7 Good cause is just too vague to attach
8 anything to. In the environmental section of 2.309
9 says that petitioner shall make environmental
10 contentions relative to the applicant's environmental
11 report and then, subsequently, any environmental
12 documentation that's generated with the NRC.
13 But we don't have any of that. There was no
14 environmental report.
15 And so we are sort of without grounding. In
16 fact, what they say is that our contentions should
17 reference the application. But in this case, there is
18 no application.
19 All we got was a letter about a year and three
20 quarters ago from the TVA to the staff saying, we would
21 like our CP to be reinstated.
22 So we're at sea here. And that places us at
23 a real disadvantage. We normally know what we're
24 aiming at and what this Board is going to do evidently
25 is while it tries to determine what good cause means,

1 it's also going to be assessing the merit of our
2 contention. And that's is a very different kind of
3 situation than what normally applies which is where we
4 know what standards we need to meet.
5 And we can show up at the prehearing
6 conference and say, well, our standards -- our
7 contentions meet that standard. But the standard has
8 yet to be set. So I hate when lawyers throw around due
9 process arguments casually, but that's sort of the
10 position we feel ourselves in. We don' t even know
11 what the rules are here yet. We are now compelled at
12 this point to justify our contentions on the basis of
13 good cause standard.
14 That concludes my opening statement.
15 >> JUDGE BOLLWERK: I think the applicant sort
16 of clearly has indicated their view of good causes, is
17 they have given several reasons that they believe
18 justify the reinstatement of their CP and those are the
19 reasons we have to focus on. Do you want to say anything
20 about that in general?
21 We need a specific set, obviously with respect
22 to the specific contentions.
23 >> MR. DOUGHERTY: Well, I question that a
24 little bit. They focus on the standard that was laid
25 out in the Washington Public Power case and they said

1 for example, that the delay was not dilatory, and that
2 they had a valid business purpose for doing this. Those
3 arguements make a lot of sense in the context of that
4 case which is where you are trying to extend the
5 construction permit.
6 But in this case, it is not an extension. It
7 is just something coming back to the Commission. We
8 think that litigating the question of whether they have
9 a valid business purpose is nothing to inform this panel
10 or the Commission as to whether these permits should be
11 reinstated. It just doesn't fit.
12 >> JUDGE BOLLWERK: All right. Judge Baratta,
13 any questions?
14 >> JUDGE BARATTA: Not at this time.
15 >> JUDGE BOLLWERK: Judge Sager?
16 >> JUDGE SAGER: No, not at this time.
17 >> JUDGE BOLLWERK: All right, thank you.
18 Turn then to TVA first, I take it.
19 >> MS. SUTTON: Yes, Your Honor. At the heart
20 of the Petitioner's claims here and Mr. Dougherty's
21 opening statement, seems to be the claim that CP
22 reinstatement is the same as CP issuance, and that's
23 plainly wrong.
24 And the Petitioners' understanding of this
25 case is why from the outset of their arguments. And

1 therefore, I think in order to fully discuss the good
2 cause standard, we really need to begin with some
3 background.
4 On that front, in an August 26 2008 letter to
5 the NRC, TVA asked the agency to reinstate the
6 construction permits which we refer to as the CPs for
7 Bellefonte Unit 1 and 2.
8 As you are aware, TVA voluntarily surrounded
9 these CPs in September of 2006. TVA requested
10 reinstatement of the CPs in order to return the units to
11 deferred status and determine whether completion of
12 construction and operation of the units is a viable
13 option.
14 In the August, 26th letter for example, TVA
15 fully explained why there is good cause including the
16 business purposes, Judge Bollwerk that you just
17 mentioned, the positive change in power generation
18 economics since 2005, increasing costs per kilowatt
19 installed capacity among generation alternatives since
20 2005. Possible constraints on the availability of the
21 supply of components necessary for new plant
22 construction.
23 And finally, the recognition that many major
24 unit 1 and 2 system structures and components are near
25 completion and this includes for example, the

1 containment building and cooling towers.
2 In response to this TVA request, the NRC staff
3 determined that the good cause standard which is set
4 forth in the Commission's Comanche Peak decision wasn't
5 in fact the appropriate standard to determine whether
6 reinstatement was warranted.
7 Now, Comanche Peak is the applicable precedent
8 here because like the facts underlying Bellefonte Unit 1
9 and 2, the facts that issue in Comanche Peak involve
10 reinstatement of a CP. Again, petitioners ignore this
11 fact and do not recognize the fact that Comanche Peak
12 decision is relevant here.
13 Applying the good cause standard therefore,
14 the staff recommended that the Commission authorize it
15 to reinstate the unit 1 and 2 CPs and on February 18,
16 2009, the Commission in fact authorized the staff to
17 reinstate the CPs and place the Bellefonte units into
18 terminated status.
19 At that time, the Commission ordered the
20 staff to offer the opportunity for a hearing on whether
21 TVA had established good cause for reinstatement and
22 indeed, that is binding precedent in this particular
23 proceeding.
24 So that brings us to the question that you've
25 asked about what is the good cause standard? What does

1 it mean and how is it to be applied in this proceeding?
2 The starting point is clearly CLI-1006 wherein
3 the Commission reaffirmed that it has the authority to
4 reinstate the construction permits as requested by TVA,
5 that authority being derived particularly from Section
6 185 of the Atomic Energy Act. And that reinstatement
7 does not entail issuance of new permits.
8 That is the point at which we disjoin from the
9 petitioners in this proceeding. They do not seem to
10 accept that fact.
11 In particular, Section 185 says then and I'll
12 quote, "Unless the construction or modification of the
13 facility is completed by the completion date, the
14 construction permits shall expire and all rights therein
15 will be forfeited unless upon good cause shown, the
16 Commission extends the completion date."
17 So to say there is no grounding in the Atomic
18 Energy Act good cause standard is incorrect.
19 Inherent in the Commission's determination in
20 this CLI-1006 decision is the conclusion that in order
21 to exercise its authority to reinstate a CP under
22 Section 185, it must find a basis constituting good
23 cause for that narrow reinstatement action, not the
24 larger action associated with initial issuance of
25 construction permits or for the possible subsequent

1 action of issuing operating licenses.
2 This is a theme that we will revisit
3 repeatedly, today. Thus, the logical derivation of the
4 good cause standard in this context is Commission
5 precedent found in earlier decisions applying Section
6 185 and in implementing regulation, which is 10 CFR
7 Section 50.55(b) to CP extension cases.
8 The Seminole Commission decision for purposes
9 of this discussion is in fact Seabrook; find it at CLI
10 84.6 and it's discussed in TVA's answer at length on
11 Page 21 of its answer.
12 It holds that in order to meet the good cause
13 standard and again we quote, "The proponent of the
14 contention must articulate some basis to show that the
15 applicant is responsible for the delay" -- which
16 petitioner here claims is not the case and acknowledged
17 -- "and has acted intentionally and without a valid
18 business purpose."
19 The Commission in Seabrook goes on to explain
20 when reviewing an applicant's stated reasons for good
21 cause, the Board should not substitute its judgment for
22 that of the applicant in selecting among any number of
23 reasonable business alternatives. Consistent with this
24 legal precedent, CLI - 1006, the Commission expressly
25 limited the scope of this proceeding to direct

1 challenges to TVA asserted reasons that show good cause
2 justification for the reinstatement of the CP, and this
3 is a logical outcome of this precedent.
4 As a result, it specifically stated that this
5 good cause proceeding does not permit the re-litigation
6 of health, safety or environmental questions that will
7 be resolved at the time of CP issuance. NEPA as a
8 separate matter does not call for a different
9 conclusion; discover review required by NEPA is limited
10 to the proposed action that being reinstatement of the
11 construction permits, not the issuance of new permits or
12 operating licenses. And again, petitioners seem to
13 overlook the fact that in this case the NRC has taken
14 action under NEPA as it has issued an environmental
15 assessment.
16 So what do the Board hears then is a question
17 of whether as a matter of fact, TVA has shown good cause
18 warranting reinstatement, or whether petitioners have
19 articulated some basis to show that TVA is responsible
20 for the delay in construction and has acted
21 intentionally and without a valid business purpose in
22 seeking reinstatement.
23 Thank you Your Honor.
24 >> JUDGE BOLLWERK: All right. Judge Baratta,
25 any questions?

1 >> JUDGE BARATTA: Not at this time.
2 >> JUDGE BOLLWERK: Judge Sager?
3 >> JUDGE SAGER: None.
4 >> JUDGE BOLLWERK: I take it your basic point
5 is that you as the applicant TVA, was allowed to define
6 the business purposes behind due cause and that is what
7 controlled basically the scope of this proceeding?
8 >> MS. SUTTON: Yes, Your Honor.
9 >> JUDGE BOLLWERK: All right, I'll turn to
10 the NRC staff, then.
11 >> MR. ROTH: David Roth for the NRC staff.
12 In general, the NRC staff agreed with what TVA
13 has just summarized.
14 The main points that we would like to bring up
15 though is that good cause, 185 Construction Permit,
16 previous hearing requests and previous decisions on
17 those, in fact provide guidance to us.
18 It is appropriate to look to these cases to
19 determine how the Commission would deal with good cause.
20 As Your Honors have noted in CLI- 0610, the Commission
21 has stated that good cause is to leave room for us to
22 allow the reinstate the construction permits if they are
23 reasonable and that 's CLI-0610. Thus, the Commission
24 is equating reasonable with good cause.
25 Further, the Commission as Your Honor has also

1 noted has stated that reinstatement on particular facts
2 presented here are lawful or proper, is synonymous with
3 good cause.
4 And as the dissent of it in CLI-0610 and 26,
5 the issue here is limited and narrow. As TVA's counsel
6 has stated, it's not really a construction permit
7 proceeding, it's instead a limited and narrow scope
8 pursuant to good cause.
9 Relative to the good cause in the application,
10 the petitioners have stated that they did not have the
11 information, they didn't have an application. However,
12 as TVA stated, TVA submitted its reasons for its good
13 cause under the Seabrook Standard. As the staff
14 briefed, the petitioners are required to base their
15 issues on what the applicant has offered for its good
16 cause.
17 In fact, here, petitioners have not done that.
18 Petitioners are outside the reasons that the applicants
19 offer for good cause. Thank you Your Honors.
20 >> JUDGE BOLLWERK: Any questions, Judge
21 Baratta?
22 >> JUDGE BARATTA: Not at this time.
23 >> JUDGE BOLLWERK: Judge Sager?
24 >> JUDGE SAGER: Not at this time.
25 >> JUDGE BOLLWERK: All right. We turn then

1 back to the petitioners. Mr. Dougherty, what would you
2 like to say in response?
3 >> Mr. Dougherty: Well, I just point out that
4 counsel for TVA references that part of the Commission's
5 January decision when they said that the scope of this
6 proceeding shall not extend to adjudication of health,
7 safety or environmental questions that were adjudicated
8 30 years ago at the time of the original issuance.
9 Now, they have extended that language to mean
10 there shall be no adjudication of health, safety or
11 environmental issues at all, that all of those subjects
12 are by definition, outside the scope of good cause. But
13 that's not what the Commission said.
14 The Commission said no adjudication of health,
15 safety, environmental questions if those questions were
16 previously resolved. And I think by implication what
17 the Commission is saying, is those types of contentions
18 and issues are fair game if they are newly arisen, if
19 they arise in context of the CP reinstatement, not if
20 they were fairly and finally resolved 30 years ago.
21 And that I think supports our raising these new issues
22 based on these circumstances.
23 >> JUDGE BARATTA: How would those come up?
24 >> MR. DOUGHERTY: Well, with respect to the
25 traditional context as we've done here, we have

1 submitted contention. For example, we think there is a
2 lot of new information about seismic conditions at the
3 site that were not in existence 30 years ago. There is
4 also record evidence that we pointed to suggesting that
5 the initial determinations made for the site regarding
6 flooding and ambient water levels, A, were erroneous,
7 and B, there was a lot of information on that.
8 So we suggest that to the extent there is new
9 information that sheds a new light on these important
10 health, safety, and environmental questions, that is
11 fair game for this proceeding. But doubtless of other
12 issues that were resolved in the 70's that are not fair
13 game now.
14 >> JUDGE BOLLWERK: How do you see the
15 relationship between this proceeding and I would say the
16 generic question and the potential operating license
17 proceeding?
18 >> MR. DOUGHERTY: I can't really answer that
19 Your Honor. Again, I'll point my unfamiliarity
20 generally with NRC procedures. I understand there's a
21 separate set of issues. It's been a long time since
22 there's been an oral proceeding. I take it those issues
23 are different. I can't answer that. But I will just
24 emphasize, we do not claim we get to re-litigate issues
25 that were litigated or that were decided back when these

1 CPs were issued. We are focusing only on issues where
2 significant new information has arisen since then.
3 >> JUDGE BOLLWERK: All right. I think
4 obviously we will be talking about this question about
5 the operating license verses the CP reinstatement,
6 versus even 2206 petitions relative to the individual
7 contentions. I think that is another continuing issue.
8 Anything further you would like to say at this
9 point on this issue?
10 >> MR. DOUGHERTY: No, thank you.
11 >> JUDGE BOLLWERK: Judge Baratta, anything?
12 >> JUDGE BARATTA: Not at this point.
13 >> JUDGE BOLLWERK: And Judge Sager?
14 >> Judge Sager. Not at this point.
15 >> JUDGE BOLLWERK: All right. Let's go ahead
16 then and move to the first contention. And again, we
17 are going to be dealing with seven different
18 contentions, some of which have subparts but we've sort
19 of divided them out so the ones that have subparts are
20 sort of dealt with under the same number.
21 The first one being Contention 3, entitled
22 The Environmental Assessment Violated NEPA. And this
23 one had two subparts, one dealing with the -- again if
24 I'm mischaracterizing, Mr. Dougherty, correct me -- but
25 one dealing with the sort of the process under which the

1 staff did its environmental assessment. And the second
2 one, the requirement, the need for the agency to
3 actually do a full environmental impact statement.
4 Those were the two provisions I think. How
5 would you like to divide your time?
6 >> MR. DOUGHERTY: For this and the remaining
7 contentions, I would like to divide my time equally
8 between opening statement and rebuttal.
9 Did you say there's going to be an indication
10 when my time is expiring?
11 >> JUDGE BOLLWERK: Yes, I will give you some
12 indication when it's time to wrap it up.
13 >> MR. DOUGHERTY: Well, as you point out, we
14 had two contentions back then. We had two basic
15 positions that we presented in our petition. One is
16 that to the extent the staff has conducted a NEPA
17 analysis of this decision and that was the environmental
18 assessment done last February. As I recall, that
19 environmental assessment did not meet the prevailing
20 standard for legal adequacy. And we would like to
21 challenge that document.
22 We challenge that on a number of grounds. We
23 said last May that it was inappropriate to conduct
24 environmental assessments after the Commission made a
25 decision to reinstate the CPs. Since then, of course,

1 the Commission has reaffirmed that decision so that to
2 some extent changes the timing of that allegation. But
3 in our petition, we've also identified a number of other
4 deficiencies in the Environmental Assessment.
5 For example, it fails to consider changes
6 that have taken place in the aquatic ecological system
7 of the Tennessee River. There is a lot of new
8 information exist regarding fish and shellfish
9 populations. Environmental assessment overlooks that
10 entirely. And the Environment Assessment does not look
11 at the cumulative impacts of reinstating the CPs for 1
12 and 2 and the anticipated licensing of Units 3 and 4.
13 So we think there are a number of
14 deficiencies in their environmental review. We also
15 contend in 3-B that an action with this kind of
16 environmental significance meets the statutory threshold
17 that trigger EIS requirement. And the EIS is required
18 for this CP reinstatement just as any EIS is required
19 for initial CP or for operating license or for combined
20 license. And this may be an instance where we disagree
21 with the Commission.
22 I think the staff and TVA is saying that this
23 contention is outside the scope of the proceeding
24 because they are environmental. We don't think that is
25 really what the Commission meant. But if it is, we

1 think that it violates the text of the meaning itself.
2 The statute imposes its own requirements. Ultimately
3 those should be interpreted by the courts. And we think
4 that under NEPA, it is a statutory argument. EIS is
5 required here.
6 I will note that there are a lot of NEPA
7 reviews under way here. TVA is conducting environmental
8 impact statement in connection with its IRP process.
9 They have also prepared a draft supplemental
10 EIS for Bellefonte 1 and 2.
11 It's appropriate these are at the level of
12 environmental impact statements. These are big
13 decisions with big environmental implications. And the
14 reinstatement of the CP is exactly the same. It
15 deserves and requires an environmental impact statement.
16 That concludes my presentation.
17 >> JUDGE BOLLWERK: All right. Any questions
18 at this point? Judge Sager?
19 >> JUDGE SAGER: Yes, Judge Bollwerk. I'm
20 trying to figure out the scope of this environmental
21 assessment.
22 It's my impression that for construction
23 permit, we are dealing with the impacts of construction
24 and not the impacts of operation which just dealt with
25 the operating license. Am I wrong in that?

1 >> MR. DOUGHERTY: I don't have a good answer
2 to that, Judge, I'm sorry, I don't know. You may be
3 correct. I take it that's your point? I take it that's
4 your point is that the scope of the assessment should
5 be limited to construction?
6 >> JUDGE SAGER: I'm just asking whether I was
7 wrong on that?
8 >> MR. DOUGHERTY: I'm afriad I don't consider
9 myself an authority on that, but I will say that we have
10 faulted the environmental assessment for its failure to
11 consider the cumulative impacts of all the proposals
12 that are before TVA and NRC. And they have proposed not
13 only to reinstate the CPs for 1 and 2 but also to
14 build the reactors of 3 and 4. And what they have
15 attempted to do in all their environmental documents
16 including environmental assessment is to segregate it,
17 to say, well, this is focused just on the CP
18 reinstatement. This is focused just on the CP
19 relicensing. And we argue that under NEPA, a
20 comprehensive review must be done.
21 That was not done in the environmental
22 assessment. So even if the scope is limited to
23 construction, it is still too narrow.
24 >> JUDGE SAGER: Okay, thank you. That's all
25 Judge Bollwerk.

1 >> JUDGE BOLLWERK: I think you have given us
2 a consensus but let me ask it any way: How do you see
3 this as different -- there were construction permit
4 extensions years ago that were granted on a regular
5 basis, had some minimal environmental assessment done.
6 Again, you're saying this is different because
7 it is just sui generis, that it required more?
8 >> MR. DOUGHERTY: No, this is different
9 because when we contacted a situation where the
10 company was seeking more time to complete construction,
11 in an ongoing NRC oversight role, you have constant
12 reporting. You have inspections. You have close
13 cooperative relationship between the company and the
14 NRC.
15 In this case, TVA walked away from the plant.
16 They turned the lights out. Who knows what happened in
17 that plant for those three years, if there was rust,
18 humidity, temperatures, varmints, we don't know. What
19 we do know from the record is that TVA sent in
20 contractors with sawzalls who started cutting up
21 tubings, steam generators, and basically we don't know
22 and walking away with it.
23 So this -- when I say "sui generis" Yes, in a
24 very significant environmental regulatory way.
25 We don't know what happened there. And if

1 they did remove according to the records, tens of
2 millions of dollars of equipment, I think this Board
3 wants to know how they are going to solve that problem.
4 If they are going to install new steam generators, what
5 are those going to look like?
6 What kind of steam generators are they going
7 to put in? How is that going to be done?
8 >> JUDGE BARATTA: I don't understand how that
9 would be any different than what was written and
10 authorized under the COL.
11 Steam generator is steam generator. It's not
12 like we're going to something that is so totally alien.
13 You're mixing two points here. You're mixing
14 a point that things were done at a facility which don't
15 seem to have any relationship to your claim that should
16 be, we filed a completed environmental review as
17 opposed to one you later claimed. I don't see it
18 attaching.
19 >> MR. DOUGHERTY: Well, Judge, we don't know
20 what really happened there. We would like to find out
21 and if this contention is established, then we will get
22 the documentation. But based on the limited information
23 we've seen, they have gone in there and just removed
24 sections of pipes.
25 >> JUDGE BARATTA: But from an environmental

1 standpoint, so what.
2 >> MR. DOUGHERTY: Well, I think if you were
3 to take out half of a steam generator and a year later
4 come back and try and re-install another half, that
5 would impose a profound technical engineering question.
6 >> JUDGE BARATTA: That may be but that is not
7 an issue for EIS, though. Looks like to me, you're
8 mixing apples and oranges.
9 >> MR. DOUGHERTY: Well, I think it poses a
10 technical question in terms of making a finding that the
11 NRC has to find before it issues the CP. I think there
12 are important safety questions here.
13 >> JUDGE BARATTA: That may be but not
14 environmental ones. You're -- this contention deals
15 with whether or not either the ER was inappropriately
16 done because of the timing issue, and also, whether or
17 not an EIS should have been done instead of an ER, not
18 relevant to whether or not the steam generator or piping
19 or something like that was installed.
20 >> MR. DOUGHERTY: Well, I actually construed
21 Judge Bollwerk's question to be somewhat broader. It
22 pointed to cases where companies that sought
23 extensions under CPs. And in those cases, the good
24 cause standard was held out and that's why I said
25 generally inapplicable to this situation, both technical

1 as well as environmental questions.
2 Now, on the environment, as I pointed out,
3 things have changed. The economy has changes, the
4 economy has changed, there is new information.
5 So those factors should shift environmentally.
6
7 >> JUDGE BOLLWERK: Anything further, Judge
8 Baratta?
9 >> JUDGE BARATTA: I have a followup question
10 for the Staff. I'm confused about something.
11 >> JUDGE BOLLWERK: Judge Sager, do you have
12 anything at this point for the petitioners?
13 >> JUDGE SAGER: Nothing further.
14 >> JUDGE BOLLWERK: All right, let's go ahead
15 and move to TVA.
16 >> MS.SUTTON: Your Honor, both subparts of
17 thank you. Both parts of Contention 3 are inadmissible.
18 Turning first to 3-A, as Judge Baratta has
19 recognized, the Petitioner here this morning has started
20 to blur arguments that are addressed in other
21 contentions regarding aging equipment, cumulative
22 impacts, aquatic effects, into his argument here. And
23 they will be fully addressed later in our other
24 discussion. So I will turn to 3-A --
25 JUDGE BOLLWERK: Five minutes, is that --

1 basically you split your time in half.
2 MS. SUTTON: That's right. 3-A alleges that
3 the NRC violated NEPA because it purported authorized
4 reinstatement of the CPs before completion of the
5 environmental assessment. As I will explain, this
6 challenge not only falls outside the scope of this good
7 cause proceeding, but it is groundless and factually
8 inaccurate. And for this reason, it must be rejected.
9 First, 3-A challenges the Staff's actions
10 under NEPA as opposed to TVA's good cause justification
11 for reinstatement of the CPs. As a result, it falls
12 outside the scope of this proceeding contrary to Section
13 2.309 (f) 13.
14 In their Reply and argument here today,
15 Petitioners claim that challenge to staff action under
16 NEPA is within the scope of this good cause proceeding.
17 And we disagree for the reasons that were set forth
18 earlier during the discussion of the scope of this
19 proceeding and the associated meaning of the good cause
20 standard. Moreover, and most importantly, this
21 conclusion is driven by the plain recognition that 3-A
22 has no basis, in fact contrary to 2.309 (f) 15.
23 As a matter of record, the NRC quite clearly
24 did not authorize reinstatement of the construction
25 permits B-4 discharging its obligations under NEPA.

1 Let's review the time line on this. The
2 Commission 's staff requirements memorandum or SRM dated
3 February, 18, 2009 authorized the Staff to issue an
4 order reinstating the CPs and placing the facility in
5 terminated status, but only upon completion of its full
6 review and acceptance of TVA's request including the
7 preparation of an environmental assessment. The latter
8 is fully described in Secy, 080041 and briefed in our
9 answer at page 25.
10 The staff then issued its environmental
11 assessment on February 24, 2009 and published the
12 document in the Federal Register on March 3rd, 2009.
13 An order reinstating the CPs were issued on
14 March 9, 2009 and published in the Federal Register on
15 March 13, 2009. Thus the staff fully complied with NEPA
16 by completing and publishing the EAD for reinstatement
17 of the CPs. And again, for this reason, this fails to
18 raise a genuine dispute on material issue of law or
19 fact and must be rejected as contrary to 2.309 (f) 16.
20 Turning to 3-B, petitioners claim that NEPA
21 requires the NRC to prepare an EIS as opposed to an EA
22 for the proposed action because licensing and permit
23 processes are underway both for the construction with
24 Units 1 and 2 as well as the construction and operation
25 of 3 and 4 pursuant to a combined license or COLA.

1 Petitioners further claim the legal
2 segmentation of cumulative issues under NEPA in view of
3 the possible co-location of multiple units on a single
4 site.
5 Again, 3-B is inadmissible because it lacks a
6 nexus to TVA's good cause justification for
7 reinstatement of CPs contrary to 2.309(f) 13.
8 But even putting aside this deficiency, 3-B is
9 inadmissible for several independent reasons. First, an
10 EIS is not required for the challenged action. There
11 are no ongoing licensing and permanent processes for
12 Bellefonte Units 1 and 2.
13 The purpose of reinstatement is to allow TVA
14 to further assess the viability of completing plant
15 construction and thereafter possibly obtaining operating
16 licenses for the unit. Therefore, no EIS is required.
17 A CP reinstatement is not one of the agency
18 actions listed in section 51.20 as requiring an EIS.
19 Second, the NRC Staff's EA quite properly
20 does not address cumulative impacts of building and
21 operating four units at the Bellefonte site.
22 TVA has not made a final decision to complete
23 construction of Units 1 and 2 nor has the NRC authorized
24 it to do so. It cannot resume reactor construction
25 until other actions are taken consistent with the

1 Commission's March, 2009 order and deferred plant policy
2 statement.
3 Moreover, the Commission ruled in the McQuire
4 case, that cumulative impacts of a future project need
5 only be considered if there is a proposal for the other
6 project, and if there is an independence, an
7 inter-dependence between them. Following that
8 precedent, this same Board in the ongoing Bellefonte
9 COLA proceeding rejected essentially the same argument
10 proffered herein by the petitioners finding that TVA's
11 request to reinstate the Unit 1 and 2 CP does not
12 constitute a proposal that is inter-dependent with the
13 Bellfonte unit, 3 & 4 COL application that is before the
14 agency.
15 Third: The NRC has not illegally segmented
16 its NEPA review of TVA's reinstatement requesting COL
17 application. The two actions are separate and distinct.
18 TVA has not proposed to construct and or
19 operate four units. Either project may proceed or not
20 proceed inter-independent of the other.
21 As explained in TVA's Answer at page 36, the
22 Board should reach the same conclusion on this
23 purported segmentation issue as they did in the
24 Bellefonte COLA proceeding rejecting 3-B in its
25 entirely. For these many reasons, 3-B lacks factual or

1 legal basis and thereby fails to raise a legal dispute
2 on material issue of law or facts contrary to Section
3 2.309(f) 15 and 6 and it too is therefore, inadmissible.
4 >> JUDGE BOLLWERK: I believe that the thrust
5 of the Petitioners argument is, if not now, when.
6 I mean, there's a lot that's happened as they
7 point out over 30 years. When are all these issues
8 going to be discussed?
9 One of the questions about -- which is
10 clearly pending about some aquatic impacts --
11 >> MS. SUTTON: Clearly, if there are current
12 safety issues, they can use the 2.206 process currently
13 before the Commission. There will also be, as you know,
14 a CP extension that would be necessary perhaps in this
15 proceeding if TVA determines that this is viable and
16 proceeds. And there would be a NEPA analysis conducted
17 as part of that CP extension.
18 Most importantly, here, if TVA ultimately
19 decides to proceed with operating licenses for these
20 units, then, there would be an additional NEPA analysis
21 at that time as well as an opportunity for hearing.
22 So there are many opportunities, Judge
23 Bollwerk. It's just that this particular reinstatement
24 request is particularly narrow in scope and the issue
25 that they are seeking to litigate under NEPA are not

1 right in this particular proceeding.
2 JUDGE BOLLWERK: Although their fear is once
3 this gets wound up, it it takes on a life of its own,
4 will these things ever come to fruitation, will anybody
5 look at it seriously.
6 >> MS. SUTTON: They have the same opportunity
7 to meet the admissible permissability standards under
8 2.309 in the COL application proceedings, for example to
9 raise the sort of issues that they are they are trying
10 to raise in this proceeding, as we will describe later
11 in conjunction with several others of their contentions.
12 >> JUDGE BARATTA: Let me ask you, you
13 mentioned the operating license. I'm looking at Part
14 50.
15 Are you referring to the section where it says
16 as part of the application for operating licensing, it
17 says, all current information such as the result of
18 environmental ER monitoring, program should be included?
19 I'm kind of paraphrasing -- the application on
20 authoring one.
21 >> MS. SUTTON: That is correct, Your Honor.
22 >> JUDGE BOLLWERK: Anything further at this
23 point?
24 Judge Sager, anything for TVA?
25 >> JUDGE SAGER: Nothing from me.

1 >> JUDGE BOLLWERK: All right. Then, let's
2 turn to the Staff.
3 >> MS. BOOTE: Good morning. I'm Christine
4 Jochim Boote for the NRC staff. With respect to
5 Contention 3, general matter, the Commission narrowly
6 limited the scope of this hearing to whether good cause
7 exist for reinstatement. As a result, 3-A and 3-B are
8 outside the scope of this proceeding. Contentions
9 should address whether good cause exist for
10 reinstatement, not NRC staff's actions.
11 Petitioners arguing Contention 3-A that the
12 EA was illegally prepared after the Commission decision
13 was made. And as the applicant has stated, this is
14 just factually inaccurate. On February 18, 2009 the
15 Commission issued its authorization to the staff to go
16 forward with review of TVA's reinstatement request. And
17 subsequently on March 3rd, 2009, the Staff's EA was
18 published in the Federal Register. On March 9 2009,
19 staff issued an order reinstating the construction
20 permits to terminate its status which was subsequently
21 publisehd in the Federal Register on March 13.
22 The Commission expected the Staff to make an
23 independent decision after conducting its review
24 pursuant to 10 C.F.R. 51.21.
25 As such, the Staff fulfilled its NEPA duties

1 prior to agency action. In Contention 3-B, Petitioners
2 assert that the EIS is required for major federal
3 actions and they cite the 51.20 (b) 2. Petitioners have
4 not identified legal requirements that Staff must
5 conduct in advance for the reinstatement of the CP.
6 51.20 (b) requires that a full EIS be conducted for
7 major federal actions such as actions involving the
8 license to operate or an original construction permit.
9 This reinstatement request is neither of those
10 situations. Furthermore, Petitioners argue that the
11 Staff should have assessed cumulative impacts of the
12 operation of Bellefonte 1 through 4.
13 Staff's EA address cumulative impact with
14 respect to potential construction of Units 1 and 2 and
15 includes information related to the COL applications for
16 Units 3 and 4.
17 The Staff did not need to address units 1
18 through 4. This action is about the environmental
19 impacts of the reinstatements of the CPs, not an
20 application for a license to operate.
21 >> JUDGE BOLLWERK: Given the -- admittedly,
22 this is not the things that you can set out there but
23 there is something that -- I don't know that regulations
24 even ever contemplate.
25 Why doesn't their request that their issue

1 relative to an EIS simply stay a legal issue, that the
2 Board ought to admit and put down for briefing?
3 >> MS. BOOTE: Why doesn't it seek a legal
4 issue?
5 >> JUDGE BOLLWERK: Yes. In other words, is
6 there a requirement here for a environmental impact
7 statement given that it doesn't seem like much that is
8 in the regulation really cover this.
9 >> MS. BOOTE: Well, Petitioners cite to
10 51.20 which doesn't actually apply in this situation,
11 that would be for an initial construction permit. This
12 is a new area and we followed 51.21 and evaluated the
13 EA. And through an EA , the Staff could have decided
14 that an EIS was necessary but in this case, we didn't.
15 >> JUDGE BOLLWERK: I guess one of the things
16 that's troubling me -- is probably not the right word
17 -- but I'm concerned about or want to make sure that I
18 understand, is sort of the process going forward here
19 because there is a lot going on as everyone here has
20 pointed out. And when you look at how this has played
21 out up to this point, we had the CP reinstatement which
22 put the plant back in terminated status.
23 That generated from the Staff an environmental
24 assessment and and a SER essentially. And there was a
25 hearing opportunity notice.

1 But then, when we came to the deferred plant
2 status request from the applicant, there was no
3 environmental assessment, there was no SER, at least as
4 I understood it from reading the documents, and no
5 hearing opportunity notice.
6 All right. Then the next step maybe could be
7 one of two things, could be a CP extension. Both of
8 these construction permits, one expires in November of
9 2011, the other expires in November of 2014. Would the
10 Staff at that point do an EA or an EIS?
11 >> MS. BOOTE: The Staff would do a EA at that
12 point.
13 >> JUDGE BOLLWERK: And what about an SER?
14 >> MS. BOOTE: The staff would do an SER at
15 that point.
16 >>> JUDGE BOLLWERK: What about a hearing
17 opportunity notice?
18 >> MS. BOOTE: Yes.
19 >> JUDGE BOLLWERK: The other thing that's
20 possible would be that TVA is going to give some kind of
21 notice under the deferred plant policy for the
22 resumption of construction. I understand they have to
23 give 120 days notice before they resume construction
24 assuming they wish to do so.
25 Does the Staff do an environmental assessment

1 for that?
2 >> MS. BOOTE: That is correct. Excuse me,
3 I'm sorry.
4 >> JUDGE BOLLWERK: So the construction
5 resumption notice generates an environmental
6 assessment?
7 >> MS. BOOTE: No, I'm sorry, it does not.
8 >> JUDGE BOLLWERK: Does not. What about an
9 SER?
10 >> MS. BOOTE: No, it does not.
11 >> JUDGE BOLLWERK: What about a hearing
12 opportunity notice?
13 >> MS. BOOTE: No, it does not.
14 >> JUDGE BOLLWERK: No? All right. Then,
15 relative to the operating license application, does
16 that involve environmental assessment or EA?
17 >> MS. BOOTE: That's correct.
18 >> JUDGE BOLLWERK: What about an SER?
19 >> MS. BOOTE: Yes.
20 >> JUDGE BOLLWERK: And I guess in accordance
21 with Watts Bar, is there likely to be a hearing
22 opportunity?
23 >> MS. BOOTE: That's correct.
24 >> JUDGE BOLLWERK: With respect to Units 3
25 and 4, and obviously, that's something this Board

1 although we are the same members of the Board for the
2 combined license case here except we have separate
3 authority to do this but happens to be a Board with the
4 same members; there is a statement in the CP
5 reinstatement, environmental assessment that says, if
6 construction activities resume for Bellefonte Units 1
7 and 2, TVA would need to assess the Bellefonte Units 1
8 and 2 construction impacts relative to Bellefonte Units
9 3 and 4. That's on 74 Federal Register at page 9314.
10 What does that mean?
11 >> That means Bellefonte --
12 >> JUDGE BOLLWERK: It sounds like the
13 decision to resume construction after the 120 day notice
14 is going to trigger some need, TVA need to assess the
15 impacts of 1 and 2 on Units 3 and 4.
16 MS. BOOTE: That's correct.
17 >> JUDGE BOLLWERK: And under what egis would
18 that be? Is that under this process? Is it with Units
19 1 and 2 or under Units 3 and 4?
20 >> Under the ER agreement for 3 and 4 would
21 have to be modified as Units 1 and 2.
22 >>> JUDGE BOLLWERK: So at that point, then,
23 the ER for Units 3 and 4 need to be modified to deal
24 with the construction impact of Units 1 and 2?
25 >> MS. BOOTE: Correct.

1 >> JUDGE BOLLWERK: Maybe then, you can let us
2 know or maybe this is a question for TVA, I'm not sure.
3 TVA has issued a Notice of Intent to prepare a
4 supplemental EIS to this 1974 construction permit final
5 environmental statement for a single nuclear unit
6 developed on site. That's at page 74, Federal
7 Register, page -- I believe 40,000 August 10 of 2009
8 to assess one B&W Unit and one AP1000 unit.
9 What is the status of that at this point?
10 >> MS. SUTTON: I will defer to Mr. Vigluicci.
11 >> JUDGE BOLLWERK: All right.
12 >> MR. VIGLUICCI: Judge Bollwerk, the draft
13 has been issued and the SCIS and we are now considering
14 the comments received on the draft and we will anticpate
15 filing a final EIS in the future.
16 >> JUDGE BOLLWERK: And I take it that was
17 done to sort of cover the basis in terms of the
18 possibility of having one of each? Or why was it done?
19 I am sort of interested to know why it was put out
20 there?
21 >> MR. VIGLUICCI: As you know, Judge Bollwerk,
22 TVA is a federal agency so to support any decision to go
23 forth on the Bellefonte site has to be supported by a
24 NEPA record. And what we are considering at this point,
25 is just the construction operation of a single unit on

1 that site, albeit a partially constructed unit, Unit 1
2 or Unit 2 or an AP 1000 unit. Or, the third alternative
3 is not proceeding on any alternative at this time.
4 >> JUDGE BOLLWERK: Since we are having a
5 discussion, let me ask you a question: In terms of the
6 resumption notice that might be put out, does that
7 require TVA to do any kind of environmental assessment
8 or any kind of safety review?
9 >> MR. VIGLUICCI: If we're going to go
10 forward with a single unit at the site, that's with the
11 present EIS, that's our environmental record for that,
12 so that will support that decision. So our Board of
13 Directors will make a decision whether or not to
14 proceed with a single Bellefonte B&W or an AP1000
15 unit. It will use that NEPA document to inform its
16 decision.
17 Thereafter, if we decide to go with the B&W
18 route, the single B&W partially constructed unit, then,
19 we would thereafter issue our 120 day letter to the NRC
20 giving them notice at some point in the future.
21 >> JUDGE BARATTA: So there would be no
22 additional environmental documents filed, is what
23 you're saying, for a single unit?
24 >> MR. VIGLUICCI: Other than the EIS that is
25 currently going on right now, no. There would no

1 separate environmental document for our 120 day
2 notice. As a federal agency, we would not do another
3 environmental review. That NEPA, the SEIS would support
4 moving forward and licensing a single unit at the site
5 from a NEPA standpoint.
6 >> JUDGE BOLLWERK: Just so that I understand
7 if there is one, what's the relationship between what
8 the staff is doing relative to its review of either the
9 CP or potential resumption of construction, and that
10 environmental impact statement that TVA just discussed?
11 How does that work under your process, if it does?
12 >> MS. BOOTE: I'm sorry, can you repeat the
13 question?
14 >> JUDGE BOLLWERK: Sure. Well, what you
15 said is that there would not be an environmental
16 assessment or ES done in the event that TVA issued its
17 resumption notice. It sounds like TVA is doing an
18 environmental assessment relative to the possibility of
19 operating a single reactor to help inform that decision.
20 Would you do anything with that environmental
21 impact statement? How would you incorporate it into
22 the NRC review process?
23 >> MS. BOOTE: It may be incorporated into our
24 review of Units 3 and 4 or potentially if they issued a
25 operating license application at that time.

1 >> JUDGE BOLLWERK: And relative to the things
2 I discussed with Staff, I will turn to TVA for a second.
3 Are there any instances where you feel you would be
4 doing additional environmental assessment or additional
5 safety reviews in terms of -- I take it the CP
6 extension, you would have to do something; is that
7 correct?
8 >> MR. VIGLUICCI: Yes, we did the
9 environmental assessment ourselves for the CP
10 reinstatement first. So not only did the staff do one,
11 but TVA before we submitted our request, we had to do an
12 environmental assessment.
13 We're doing the environmental review right now
14 on a single unit. And typically, how this has worked in
15 the past, if we decide to go forward with an operating
16 license application to the staff, if we decide to go
17 prosecute that if our Board of directors tells us that's
18 the way to go, we typically use the environmental
19 information in our SEIS to inform our environmental
20 report that goes to the staff.
21 So we will use that basically as a base
22 document to draw from that in part as part of our
23 application to the staff for our operating license
24 application for the B&W unit.
25 >> JUDGE BOLLWERK: Let me also since I'm back

1 with you, I'll address this question: Why doesn't the
2 question of whether the need for an EIS here, why isn't
3 that a legal issue we ought to admit and sit down for
4 briefing?
5 >> MS. SUTTON: Because Your Honor, NEPA as a
6 statute is tied to the scope of the federal action at
7 issue. And in this particular case, as we explained, to
8 begin with, reinstatement is a very narrow scope
9 action. It is not equivalent to the issuance of CPs ,
10 for example. So the scope of the environmental
11 assessment under NEPA in this case was very narrow. It
12 was a EA and it was consistent in addition not only to
13 the statute, but with 51.20.
14 >> `JUDGE BOLLWERK: All right. Judge
15 Baratta, do you have any questions for either Staff or
16 TVA since I sort of brought them both in?
17 >> JUDGE BARATTA: For the Staff, in looking
18 at Part 50, it would appear that when you go to the
19 operating license stage, you in essence have to update
20 all of your environmental documents; is that correct?
21 >> Mr. Boote: That's correct. Yes.
22 >> JUDGE BARATTA: So given BREDL's concern
23 about whatever information has accumulated over the last
24 30 years or so, would that not then have to be taken
25 into account at that point?

1 >> MS. BOOTE: That would considered when we
2 evaluate a potential operating license application,
3 that's correct.
4 >> JUDGE BARATTA: And it would clearly be
5 within the scope of that licensing proceeding?
6 >> MS. BOOTE: I can't say that without
7 actually seeing their potential contention at that
8 stage but presumably, it would be.
9 >> JUDGE BARATTA: And it would be then notice
10 of opportunity for hearing?
11 >> MS. BOOTE: Yes, that's correct.
12 >> JUDGE BARATTA: Thank you.
13 >> JUDGE BOLLWERK. That's sort of the rub
14 isn't it, that you won't really now what's going to go
15 in when an EIS for the operating license until the
16 time comes?
17 >> MS. BOOTE: That's correct.
18 >> JUDGE BOLLWERK: It may be something in or
19 they may not. The concerns they raised here may come in
20 and they may not.
21 >> MS. BOOTE: Those concerns may or may not
22 be addressed by the EIS that Staff performs. So they
23 may not be an issue any more for them.
24 >> JUDGE BOLLWERK: All right, Judge Sager,
25 do you have anything?

1 >> JUDGE SAGER: Well, I was following up a
2 little bit on Tony -- Judge Baratta's question. I was
3 also curious about when this becomes updated. A plant
4 built in 1974 standards might have trouble passing a
5 2015 review. So is there an interim mechanism or am I
6 understanding it correctly that those issues just will
7 not come up until the operating license?
8 >> MS. BOOTE: That's correct, Your Honor.
9 >> JUDGE SAGER: All right, thank you.
10 >> JUDGE BOLLWERK: Judge Baratta, anything
11 else?
12 >>JUDGE BARATTA: No.
13 >> JUDGE BOLLWERK: Judge Sager?
14 >> JUDGE SAGER: Nothing further.
15 >> JUDGE BOLLWERK: All right, let's turn back
16 to the Petitioners then.
17 >> MR. DOUGHERTY: Well, Judge, this colloquy
18 between yourself and the Staff and TVA has been
19 enlightening in several respects. It was interesting to
20 hear counsel for Staff say they could not find
21 regulation requiring an EIS so therefore, no EIS is
22 required. EIS of course is required by statute. It's
23 the statute itself that requires EIS hearing if there is
24 no regulation. It does not really matter. And that's
25 of course if it goes to our contention, as you suggest,

1 this is a legal requirement.
2 But I think what I was really struck by during
3 this conversation was that the two different approaches
4 that TVA and NRC are taking to NEPA compliance. And
5 it's in a context which historically, a lot of agencies
6 have seen NEPA compliance as red tape. It's just stuff
7 you gotta do, a box on a checklist, it's a document you
8 have to prepare before the end of the process. But what
9 the EIS or even the environmental assessment is intended
10 to do is to be in front of the decision maker at the
11 time the decision is made so that these decisions are
12 more environmentally informed.
13 And what TVA is doing is saying, what we are
14 proposing to complete construction on Units 1 or 2 and
15 what we are doing is we are taking the 1974 EIS and
16 we're supplementing it. So they issue a draft,
17 supplemental EIS and they held public hearings. And as
18 counsel just stated, once that process is complete,
19 then it will go to the TVA Board and they will decide,
20 do we want complete construction or not.
21 Staff, however says, well, first of all, the
22 Commission has already reinstated the permit and now,
23 we're in a proceeding considering reinstatement of a
24 permit. And the Staff is saying that no environmental
25 review is necessary until the OL stage, or perhaps at

1 some other future stage. But it's after the key
2 decision's being made.
3 And our point is that if NEPA compliance is to
4 be meaningful, it has to be done now because the
5 authorization by the Commission as part of the
6 reinstatement of the CP sets in motion, a chain of
7 dominoes of investments by TVA because we know from the
8 recent pleadings dealing with the tendon failure, they
9 have staff or consultants and contractors all over the
10 site inspecting, making assessments -- we don't know
11 what they are doing but a lot of money is being poured
12 into in and not to mention lawyer fees.
13 So financial concrete is being poured around
14 this project and the momentum builds every passing day.
15 You can't do a NEPA analysis five years from now. Now
16 is the time to decide if this really makes sense in
17 light of all the issues we've raised, whether there is
18 environmentally preferable power available at lower
19 cost.
20 Now, what TVA is saying is well, we really
21 haven't decided if we are going to complete
22 construction 1 and 2. And so therefore, it is
23 inappropriate now to review the environmental impacts of
24 recontructing it . But we want you to give us the legal
25 authority any way which can amount to someone going for

1 a driver's license and saying I don't know if I will be
2 driving or not so don't test my eyesight because it is
3 not necessary until I really make up my mind if I'm
4 going to drive or not. But I'd like the driver's
5 license now any way. Please give me the authorization.
6 That sort of undoes the whole process. They
7 can't begin to do the work until they get the
8 authorization and they say not until a later stage can
9 it be meaningful environmental information.
10 The NRC has to assume that whenever an
11 applicant comes to it saying we want authorization to do
12 X, that they will in fact do X.
13 And you don't know if they will do X. They
14 may decide not to do X. Or they may as what happened
15 here, they may build half a plant and then back away.
16 You never know.
17 In those cases, one could argue that the
18 regulatory review time is wasted because they never
19 initiated construction, they never completed
20 construction. All the environmental harms are evaluated
21 and never came to pass so maybe it is a waste of time.
22 And that's the way it has to be. NRC has to conduct
23 those reviews in a meaningful way on the assumption that
24 this will all take place.
25 That's the posture we are in now.

1 We have to assume that TVA will act and
2 reinstate the CP and therefore, we evaluate the
3 environment in that context, even though we know they
4 might not.
5 The final thing I wanted to add is that Staff
6 and TVA responded to our contentions as we wrote it last
7 May in which we say the Commission violated the law by
8 first, reinstating the CPs in January and then issuing,
9 environmental assessment in February. Since then, the
10 facts have changed. Not only were there a Federal
11 Register order in March but a month ago, as we all know,
12 the Commission reaffirmed its decision.
13 So that whole timing question has sort of been
14 mooted by events. But the point, our petitions contend
15 that the environmental assessment is deficient in a
16 number of respects and so considered cumulative impacts.
17 And so we think that those claims survive any
18 subsequent Commission issues. That concludes my
19 rebuttal.
20 >> JUDGE BOLLWERK: Okay. Judge Baratta?
21 >> JUDGE BARATTA: Nothing further.
22 >> JUDGE BOLLWERK: Judge Sager?
23 >> JUDGE SAGER: Nothing here.
24 >> JUDGE BARATTA: I would like to hear a
25 response from the Staff with regards to the

1 inconsistency that the Intervenor claims. Can you
2 provide any thoughts on that?
3 >> MS. BOOTE: As an initial response, I want
4 to clarify that I didn't say there was no regulation
5 out there that applied in this situation, simply that
6 51.20 does not apply in this situation; 51.21 does
7 however and that the Staff's NEPA requirements has been
8 fulfilled in this case, evaluated before making any
9 decision.
10 >> JUDGE BARATTA: I was more referring to the
11 inconsistency and the fact that the applicant, TVA says
12 that they have to do a supplemental EIS and Staff says
13 they don't, staff does not have to do --
14 >> MS. BOOTE: The staff does not have to do
15 EIS.
16 I believe I responded to this initially but to
17 clarify, in doing an EA, the Staff could after
18 determining that an EIS was necessary if new
19 information developed. However, it did not come to our
20 attention that it needed to conduct an EIS. So for the
21 reinstatement of the CP, it is limited to that narrow
22 scope. So new issues related to that didn't come up.
23 I'm not sure if I answered your question?
24 >> JUDGE BARATTA: I'm not sure either.
25 >> MS. BOOTE: Are you asking about why TVA

1 and the Staff both did EAs and not EISs?
2 >> JUDGE BARATTA: Well, it does seem odd that
3 the TVA would decide to do a supplemental EIS and staff
4 would decide to do an EA.
5 I think what the TVA -- and I would like to
6 ask this question, you're doing the supplemental EIS
7 for the actual decision to go forward with
8 construction?
9 >> MS. SUTTON: Yes, Your Honor, that is a key
10 point there, two different decisions. One is for the
11 TVA Board to decide whether it will proceed with
12 construction. And the question posed to the staff was
13 reinstatement of the CPs, two separate issues.
14 >> JUDGE BARATTA: Staff talks about the EA
15 relative to proceeding with reinstatement.
16 >> MS. BOOTE: That's correct.
17 >> JUDGE BARATTA: Which is a very narrow
18 scope and therefore, would not automatically kick in a
19 supplemental EIS.
20 >> MS. BOOTE: That's correct.
21 >> MS. SUTTON: And consistent with that Your
22 Honor, TVA also did an EA regarding reinstatement and
23 came to the same conclusion. It's just that the
24 supplemental EIS is for purposes of their Board and the
25 decision as to whether or not to construct.

1 >> JUDGE BARATTA: The original EIS that was
2 done 30 years ago was for the construction of the two
3 units, is that correct?
4 >> MR VIGLUICCI: Construction and operation
5 of the two units.
6 >> JUDGE BARATTA: Okay, why wouldn't then,
7 the Staff have -- you did not do -- I guess you did.
8 >> MR. VIGLUICCI: Correct --
9 >> JUDGE BARATTA -- do an EIS but an ER was
10 submitted to the agency was for the construction of two
11 units, right, because you still have to put one in for
12 the operating? So why then would not that trigger a --
13 if you only go forward with one unit, why doesn't that
14 then require a supplement to your ER that was done 30
15 years ago?
16 >> MR. VIGLUICCI: It would if we go forward,
17 if we decide to construct that single unit, we are going
18 to have to amend our operating license application for
19 the B&W unit.
20 >> JUDGE BARATTA: But not the construction
21 one.
22 It looks like there's some sort of
23 inconsistency here where the original one was for two
24 units.
25 >> MR. VIGLUICCI: Construction and

1 operation of two units.
2 >> JUDGE BARATTA: But if you go forward with
3 construction and operation of a single unit, why doesn't
4 that then trigger a supplement to the original ER then
5 associated with the CP? They are the same.
6 >> MR. VIGLUICCI: It is a supplement. We are
7 supplementing our original 1974, EIS, TVA is on this
8 day.
9 >> JUDGE BARATTA: That's TVA's EIS.
10 I'm talking about the application that was
11 submitted to the agency or the NRC 30 years ago which
12 had an ER and a PSAR, correct?
13 >> MR. VIGULICCI: Correct.
14 >> JUDGE BARATTA: And the ER that was put in
15 at that time had the construction two units.
16 Did it look on the construction of single
17 units?
18 MR. VIGULICCI: It looked at two units back in
19 1978 when we adopted it in our operating license
20 application.
21 >> JUDGE BARATTA: My question then still
22 stands, if that is the case, you only go forward with
23 one unit, why does that require an amendment to the ER
24 submitted and accepted by this agency 30 years ago?
25 >> MR. VIGLUICCI: I think my point is if we do

1 decide to go forward, we will amend our operating
2 license application with an additional ER that will
3 address one unit.
4 >> JUDGE BARATTA: But you will not go back
5 and supplement the CP?
6 >> MR. VIGULICCI: That is correct.
7 >> JUDGE BOLLWERK: Anything Staff wants to
8 say in that regard? You're conferring among
9 yourselves.
10 Mr. Dougherty, by the way, you get the final
11 word?
12 >> MS. BOOTE: Just one minute.
13 >> MS. SUTTON: Your Honor, while they are
14 conferring, can I add one other point to this? One of
15 the reasons there is really no need for supplementation
16 is that the - presumably, the two unit analysis without
17 a single unit analysis and I believe it has been the
18 agency's precedent not only here but historically, not
19 to go back and redo it when it is bounding.
20 >> MS. BOOTE: Can I respond?
21 >> JUDGE BOLLWERK: Yes.
22 >> MS. BOOTE: Assuming that TVA would
23 propose an operating license application, before the
24 staff, would evaluate whether or not to prepare a
25 supplement to the final environmental impact statement

1 pursuant to 51.95 (b). We believe that answers your
2 question.
3 >> JUDGE BOLLWERK: Thank you.
4 Judge Sager, anything you want to put in at
5 this point?
6 >> JUDGE SAGER: Nothing from me.
7 >> JUDGE BOLLWERK: Mr. Dougherty, let me turn
8 back to you, then. Is there anything you would like
9 to say?
10 >> MR. DOUGHERTY: Only Judge that as I said,
11 the petitioners considered the reinstatements of the CP
12 to be tantamount to its issuance in the first instance.
13 But even if it falls short of that, we interpret
14 reinstatement as in effect, a green light to the
15 applicant to be in a construction status that in effect
16 authorizes them to resume construction.
17 Now, admittedly there may be some intermediate
18 steps, they've upgraded their status on the deferred
19 plant policy to terminate the deferred and could be
20 another 120 day period here and there. But any member
21 of the public or Court would see it, granted a new or
22 had restoration to resume construction must be
23 considered as construction now authorized. Now, it's
24 possible if the EIS is going to be done by the Staff in
25 one of these upcoming intermediate stages, then they can

1 certainly argue that we can satisfy NEPA requirement
2 that segementation.
3 The question is should the CP be reinstated.
4 The question to time for doing the environmental review
5 is now at some indeterminate intermediate stage months
6 from now.
7 That's all I have. Thank you.
8 >> JUDGE BOLLWERK: All right. Anything
9 further Judge Baratta?
10 JUDGE BARATTA: No.
11 >> JUDGE BOLLWERK: Judge Sager?
12 >> JUDGE SAGER: No, nothing from me.
13 >> JUDGE BOLLWERK: At this point, it is about
14 10;30. We've been going almost an hour and a half. Why
15 don't we go ahead and take a break at this point.
16 I don't know if -- Mr. Dougherty, is ten
17 minutes enough for you if you have to move around?
18 >> MR DOUGHERTY: Just as long as it is not a
19 long line at the men's room.
20 >> JUDGE BOLLWERK: That I can't speak. I
21 have no idea. But let's take ten minutes and if that's
22 not working, we'll come back and see what we need to
23 do. But at this point, let's take a ten minute break.
24 Thank you.
25 (Whereupon, a ten minute break was taken)

1 >> JUDGE BOLLWERK: Are you ready Judge Sager?
2 >> JUDGE SAGER: Yes, I'm ready, Judge
3 Bollwerk.
4 >> JUDGE BOLLWERK: Let's go back on the
5 record, please.
6 We have had a brief break and I think we're
7 ready now to talk about Contention 4.
8 I should just mention, we will see how we're
9 doing in terms of time with Contention, 4 and 5 and
10 decide how -- whether we and if we need to take a lunch
11 break at that time.
12 Let's at least try to get those in.
13 So Contention 4 deals with plant site geologic
14 issues not adequately addressed.
15 And again, I think before I told you, you want
16 to leave it five and five, the same way. All right,
17 we'll go with you Mr. Doughtery.
18 >> MR. DOUGHERTY: Thank you, Your Honor
19 although I don't think I have ten minutes worth of stuff
20 to say on this. For the most part, we believe the
21 materials we filed, both the petition and the
22 supporting affidavit of Dr. Gunderson speak are for
23 themselves.
24 On the other side, we are not trying to reopen
25 issues that were decided in 1974. But to the extent

1 issues have arisen or the underlying facts have changed,
2 we think that those issues should be fair game for
3 adjudication. And one of those is the question of
4 seismic integrity.
5 In the last 35 years, there has been lots of
6 changes in the seismic landscape of this site and we
7 pointed to documents attesting to that. And our expert
8 Gunderson points out that some 20 earthquakes, Richter
9 4 or higher have occurred since 1974.
10 So we think that's one of the issues that
11 should be brought into play here. And I'd also note in
12 the dissenting opinion of the whistle blowers statement,
13 Mr. Jesse Williams, he pointed specifically and said
14 that a lot of the site suitability determinations that
15 were made back in the 70's has since been shown to be
16 incorrect. And so it is his view that site suitability
17 is an open question right now and should be evaluated at
18 this stage by the NRC.
19 So that is the context that we are trying to
20 get admitted at this time.
21 >> JUDGE BOLLWERK: All right. Again, I guess
22 we have raised the question about the 2206 petition and
23 operating license.
24 Do you want to say anything about either of
25 those remedies?

1 >> MR. DOUGHERTY: Well, I certainly think the
2 OL licensing proceeding is beyond the planing horizon.
3 I don't know when that's going to happen, could be five
4 years from now. What we were talking about is the
5 decisions that have to be made by the Commission and the
6 necessary reviews that those go into that.
7 We have not actually talked about whether 2206
8 would be a more appropriate vehicle and I don't really
9 have an opinion on that but it seems like we are here
10 to raise questions. We've done that, supported it with
11 expert documents and maybe I just need to be shown why
12 2206 would be a more appropriate vehicle for raising
13 that kind of issue or perhaps some other venue to have
14 that conversation.
15 >> JUDGE BOLLWERK: All right, Judge Baratta,
16 do you have anything?
17 >> JUDGE BARATTA: If you look at the
18 regulations, it appears that there is an opportunity
19 when they go for the operating license to raise those
20 issues. It looks as if the regulations are structured
21 so that's exactly what is supposed to be done. And I
22 don't understand what your issue is with that?
23 >> MR. DOUGHERTY: Well, If it is determined
24 say at that stage, either the site is inappropriate
25 because of the seismic criteria or conditions, or that

1 seismic considerations require plant redesign, more
2 tedons, thicker walls, whatever, the time for making
3 those decisions is now rather than after the plant is
4 constructed.
5 Once the plant is contructed, you have made a
6 irreversible irretrievable commitment of resources and
7 there is not much you can do except perhaps go back and
8 add more addendum or something. So --
9 >> JUDGE BARATTA: Well, that's the risk that
10 TVA takes. That's not something that if they decide to
11 go forward with it and it turns out that there is an
12 issue as you pointed out, that's their problem.
13 >>. MR. DOUGHERTY: Well, that's why you're
14 the judge, not me but I understand the position that the
15 NRC is to make decisions about site suitability and risk
16 to public health and safety and is not to defer to TVA.
17 >> JUDGE BARATTA: Don't the regulations
18 provide for that decision to be made when the operating
19 license is put forth?
20 >> MR. DOUGHERTY: Well, yes, but they are
21 also to be made at the time the construction permit is
22 issued. And so we say if they must be made when the
23 CP is issued.
24 >> JUDGE BARATTA: The CPI was issued 30 years
25 ago.

1 >> MR. DOUGHTERY: Right, and according to the
2 Staff, those decisions were flawed and should be
3 reopened. But that's not what our contention goes to.
4 What we're saying is that since then, new information
5 has arisen that sheds a new light on that whole question
6 and that if the Commission is going to decide anew, to
7 authorize resumption construction, it should consider
8 seismicity as part of that calculus.
9 >> JUDGE BARATTA: Regardless of that new
10 information, I know we're not supposed to look at the
11 merits at this point; the fact that there are
12 earthquakes in the area is not new information.
13 There has been earthquakes in the area and
14 recognized even in the original ER. So what?
15 >> MR. DOUGHERTY: I'm sure they have
16 earthquakes lots of places. All I can say is that our
17 expert, Gunderson and Mr. Williams and Staff have both
18 expressed the point of view that the site has not been
19 determined to be suitable for these reasons.
20 So we think that's a fair issue for
21 adjudication in these proceedings. I don't pretend to
22 have all the answers right now.
23 >> JUDGE BOLLWERK: Anything further Judge
24 Baratta?
25 >> JUDGE BARATTA: Nothing here.

1 >> JUDGE BOLLWERK: Judge Sager?
2 >> JUDGE SAGER: I have nothing here.
3 >> JUDGE BOLLWERK: All right, thank you sir.
4 We'll come back to you on rebuttal. We'll turn to
5 Tennessee Valley Authority.
6 >> MS. SUTTON: Yes, Your Honor. The fourth
7 proposed contention is inadmissible for several
8 reasons. First, contrary to 2.309 (f (1(iii) the
9 proposed Contention 4 and the supporting Gunderson
10 affidavit clearly fall outside the limited score of this
11 good cause proceedings. Why? Because they seek to
12 challenge TVA's compliance with NRC geologic and seismic
13 siting criteria and have nothing whatsoever to do with
14 TVA asserted reason that show good cause justification
15 for the reinstatement of the CPs.
16 As the Commission made quite clear in its
17 January 7th decision regarding its statutory authority
18 to reinstate CPs, this proceeding does not entail the
19 issuance of new CPs. Moreover, it clearly stated that
20 the purpose of this proceeding is not to engage in an
21 unbridled inquiry into the safety and enviromental
22 aspects of reactor construction and operation.
23 Proposed Contention 4 seeks to engage in
24 exactly the sort of inquiry expressly concluded by the
25 Commission.

1 It's important to note that the NRC evaluated
2 TVA's compliance with siting criteria at the time of
3 initial CP issuance and found the site suitable from a
4 geologic and seismic standpoint.
5 Through this proposed contention, petitioners
6 improperly seek to revisit plant siting issues related
7 to the initial permitting of the facility and unrelated
8 to TVA's demonstration of good cause for reinstatement
9 of the CP.
10 Second, proposed Contention 4 is inadmissible
11 for the further reason that it failed to present a
12 concrete and genuine dispute appropriate for litigation
13 contrary to 2.309 (f) (1)(iv) and (vi).
14 In this regard, Petitioners incorrectly
15 assumed that the reinstatement of the CPs authorizes
16 anew, the construction of the reactors. This has been
17 a repeated theme throughout their pleadings and their
18 argument here today.
19 Even if reactivated, a CP only constitutes an
20 authorization to resume construction. It does not
21 constitute NRC approval of the safety of any plant
22 design feature. The Commission will not issue a license
23 authorizing operation of Bellefonte Unit 1 or 2 until
24 first, TVA has submitted by amendment to its OL
25 application, the complete FSAR. And second, the

1 Commission has approved the final plant design and has
2 confirmed completion of construction consistent with
3 that design.
4 These requirements and procedures ensure that
5 Bellefonte Units 1 and 2 if completed and licensed to
6 operate, comply with applicable NRC requirements
7 including those implemented to ensure safe operation of
8 the plants during seismic events. Further to this
9 point, the Commission recently noted in CLI-10-06, that
10 should TVA apply for an operating license, there will a
11 future hearing opportunity on that application. And
12 that is in CLI-10-06 Slip Opinion at 14.
13 This goes directly to the question posed by
14 this Board on page 7 of your February 18th memorandum
15 and order.
16 That is whether or not the issue posed and
17 more appropriate for consideration in a Part 50
18 operating license proceeding.
19 The answer with respect to Petitioner's fourth
20 proposed contention is clearly yes.
21 Petitioners really are trying to argue that
22 reinstatement of the CPs defacto equates to operating
23 license permitting actions and therefore, they are
24 trying to collapse those operating license
25 considerations into this very narrow reinstatement

1 proceeding which is just inappropriate.
2 So in the future, with respect to this fourth
3 proposed contention, it should be raised in any future
4 potential operating license proceeding, again, assuming
5 that such a future proposed contention fully meets the
6 admissibility requirements of Section 2.309 which at
7 present, Contention 4 does not.
8 And to that final point, I would like to add
9 that the contention is inadmissible for the additional
10 reason that it failed to present a sufficiently and
11 particularized supported challenge. Petitioner provide
12 no support in the form of documentation or expert
13 opinion for their generalized claims regarding potential
14 earthquake damage.
15 They do not explain why or how the occurrence
16 of such events precludes TVA's compliance with NRc'S
17 seismic criteria or design requirements and such vague
18 and unsubstantiated allegations does not satisfy 2.309
19 (f) (1)(v) and (vi).
20 For all of these reasons, Your Honors,
21 proposed Contention 4 should be rejected.
22 >> JUDGE BOLLWERK: Why aren't the concerns of
23 Mr. Williams raise adequate to support the contention?
24 >> MS. SUTTON: The concerns that have been
25 raised, Your Honor are not extraordinary. There are

1 NRC processes to deal with such concerns.
2 At the end of the day , the NRC staff will
3 nevertheless do a complete review and evaluation and
4 those concerns should not -- do not in any way supercede
5 the NRC Staff's review otherwise.
6 >> JUDGE BOLLWERK: The basic thrust of your
7 arguement is the OL process is the one in which this
8 can be raised?
9 >> MS. SUTTON: Yes, Your Honor. And that the
10 Commissioin in CLI-10-06 clearly anticipated that these
11 sort of arguments may be attempted to be raised but they
12 are not proper for these proceedings which is very
13 narrowly focused on reinstatement.
14 >> JUDGE BOLLWERK: Do you agree with the
15 general tenor of Judge Baratta's comments that you are
16 sort of taking this at your own risk, that if it turns
17 out additional work needs to be done, designs have to be
18 changed, tendons have to be added, whatever problems
19 there are, that TVA is in the position they will have
20 to either fix it or let it go?
21 >> MS. SUTTON: They will have to fix it,
22 yes, Your Honor, or let it go.
23 >> JUDGE BARATTA: Should that enter into the
24 business decision that's associated with good cause?
25 >> MS. SUTTON: No, Your Honor. The stated

1 reasons that TVA presented did not include seismic
2 consideration. So for purposes of this proceedings,
3 the answer is no. And moreover, that is a technical
4 issue as opposed to a business issue and it will be
5 fully considered by the NRC staff.
6 >> JUDGE BARATTA: Does it not go to the cost
7 of finishing the facility which goes to those factors
8 that you raised in the letter?
9 >> MS. SUTTON; It is the current TVA position
10 that it is seismically adequate so Your Honor, we don't
11 believe it is an adequate basis to change their course
12 of action and request reinstatement.
13 >> JUDGE BOLLWERK: Judge Sager, do you have
14 anything?
15 >> JUDGE SAGER: Yes, thank you.
16 My question is that I think you said that
17 there are two steps, first that the Commission would
18 approve the plant design and then, there would be an
19 operating license approval step.
20 But if that's the case, how does the
21 Commission evaluate the plant design if the EIS and FSAR
22 haven't been updated?
23 >> MS. SUTTON: As part of the OL application
24 proceeding, they would be updated and that is the basis
25 upon which the Commission would make an ultimate

1 decision.
2 >> JUDGE SAGER: Okay, thank you.
3 >> JUDGE BOLLWERK: Let me just ask you a
4 process or procedural question. I think you said a
5 couple of times that TVA would amend its operating
6 license application.
7 TVA did file an operating license application
8 a number of years ago and it was never acted upon. It
9 was noticed but nothing ever went forward. So I take it
10 your position is if I'm understanding what you're saying
11 is that operating license application is in fact still
12 pending with the agency?
13 >> MS. SUTTON: Yes, Your Honor.
14 >> JUDGE BOLLWERK: So anything you do then
15 you see as amending that application?
16 >> MS. SUTTON: Yes, Your Honor.
17 >> JUDGE BOLLWERK: So you're not going to
18 file a new application, then ?
19 >> MS. SUTTON: That is not our anticipated
20 course of action.
21 >> JUDGE BOLLWERK: If you were to go forward?
22 >> MS. SUTTON: If we were to go forward.
23
24 >> JUDGE BOLLWERK: Okay. One other question
25 just to clarify. You mentioned earlier, this goes back

1 to the question of the environmental side: Did you all
2 do an environmental assessment relative to the CP
3 reinstatement?
4 I read the letter that you put in. Do you
5 consider that to be an environment assessment of sort or
6 did you do anything -- or is that letter basically the
7 the sum and substance of the analysis that you did?
8 >> MR. VIGLUICCI: Judge Bollwerk, TVA did an
9 environmental assessment, it's own internal
10 environmental assessment for its NEPA requirements in
11 addition to and before I send in this letter to the NRC
12 requesting reinstatement.
13 So there is a separate EA issue by the
14 Tennessee Valley Authority for its decision to seek
15 reinstatement.
16 >> JUDGE BOLLWERK: All right, was that made
17 available -- is that in the record anywhere?
18 Was it made available to staff? Staff is
19 nodding their head. So it is in Adams somewhere, I take
20 it?
21 >> MR. ROTH: Yes, Your Honor. David Roth for
22 staff.
23 >> JUDGE BOLLWERK: All right. Thank you.
24 >> JUDGE BARATTA: You would not happen to
25 have the number would you?

1 >> MS. BOOTE: I'm looking for that right now.
2 >> JUDGE BOLLWERK: Judge Sager, anything
3 further?
4 >> JUDGE SAGER: Nothing further.
5 >> JUDGE BOLLWERK: All right.
6 anything further Judge Baratta?
7 >> JUDGE BARATTA: No.
8 >> JUDGE BOLLWERK: All right. Let me turn to
9 Staff then.
10 >> MR. ROTH: Thank you, Your Honor. David
11 Roth for the Staff. A followup to the previous
12 question, TVA provided the EA to the Staff in response
13 to the RAI. We'll provide you a ML number but that's
14 currently available ADAMS. It's been publicly available
15 for sometime.
16 Basically, there is not much additional to
17 add.
18 What counsel for TVA has stated is --
19 correctly captures the review process and correctly
20 captures the Staff's position on this. This new
21 information whether raised by Petitioner, whether raised
22 by U.S. GS, whether raised by an inspection team or
23 whether raised by TVA, if there is new information that
24 may affect the operating license final safety and plant
25 after its completed, then that will have to be updated

1 in the operating license application.
2 But in the narrow scope of good cause
3 proceeding, whether the finally as-built design has
4 sufficient new struts, whether it sufficiently addresses
5 any new information on earthquake is not part of the
6 construction permit reinstatement good cause.
7 >> JUDGE BOLLWERK: Would you like to respond
8 to Judge Baratta's point about why doesn't that sort of
9 question he raised about the potential cost that could
10 be entailed if there is additional seismic work that has
11 to be done, why doesn't that go to the question of good
12 cause as framed by TVA in terms of the financial
13 assessment that they are undergoing?
14 >> Mr. Roth: That would not go to the
15 contention admissibility for the good cause in part
16 because as TVA is doing in their pleading, there is
17 really no information speculation that there might been
18 an earthquake.
19 It is such speculation that the earthquake
20 might have an impact. It does not go directly to
21 anything saying that TVA now has a for example, a cost
22 prohibitive issue because they can't fix equipment X or
23 room X to make it seismically qualified.
24 So even if one were broadly to view it as good
25 cause, which the Staff do not view, nevertheless, it is

1 still insufficient to meet that standard.
2 >> JUDGE BOLLWERK: Would you like to say
3 anything about the adequacy of Mr. Williams' information
4 relative to the admissibility of this contention, given
5 he is a NRC staff employee?
6 >> MR. ROTH: We have a robust process that
7 addresses the employee concerns. The Chairman himself
8 has noted with pleasure the fact that Mr. William was
9 able to bring these issues forward. As far as how the
10 petitioners have brought this information before the
11 Board today, the staff believes they have already
12 adequately addressed the question and we're not going to
13 directly say anything further on that.
14 >> JUDGE BOLLWERK: All right. Judge Baratta.
15 >> JUDGE BARATTA: No questions at this time.
16 >> JUDGE BOLLWERK: Judge Sager.
17 >> Judge Sager. Nothing further.
18 >> JUDGE BOLLWERK: All right, then, let's
19 turn back to Mr. Dougherty.
20 >> MR. DOUGHERTY: Thank you Your Honor. Of
21 course, TVA and the Staff argue about this contention as
22 they argue about every contention, that's it's outside
23 the scope. It's been defined by the Commission,
24 scoping, good cause. TVA staff actually argued that the
25 scope has been expressly set out by the Commission

1 certainly without express because we don't know what the
2 scope is, good cause standard is.
3 According to Staff's counsel, I guess good
4 cause mean it's a valid business decision. If you boil
5 it down, it's simply a question of whether this makes
6 good business sense for TVA.
7 We see this Board's duty as being broader than
8 that, not just to make sure that TVA is making good
9 business choice but actually that the public health and
10 safety and security is being protected.
11 In that vein, I was struck to hear TVA's
12 counsel comment that in response to your question, Dr.
13 Baratta, that the end of the construction process they
14 were discovering that there was seismic issues perhaps
15 requiring plant redesign and that they would either fix
16 it or let it go.
17 I don't know what that means but, we expect
18 it to be fixed and we think the time to fix it is before
19 it's built. And now is the time to consider whether it
20 needs to be fixed, not after it is complete. And that
21 concludes my rebuttal.
22 >> JUDGE BOLLWERK: I think the "let it go
23 term" is probably mine. What I meant by that was not
24 operative. If it does not match the seismic
25 requirements, then it can't be operated.

1 >> MR. DOUGHERTY: Well, we think it unlikely
2 that any agency, whether it's the NRC or this panel or
3 any other tribunal is going to say, well, you spent ten
4 billion dollars on this plant and it's got issues so we
5 are just going to shut it down.
6 >> JUDGE BARATTA: Did you ever hear of
7 Midland?
8 >> MR. DOUGHTERY: Well, we think it's
9 unlikely, not theoretically impossible but and we don't
10 think that the Atomic Energy Act under NEPA directs this
11 panel to take that approach.
12 We think that the role of the NRC is to get
13 ahead of these issues and resolve them before they get
14 literally set in concrete.
15 >> JUDGE BOLLWERK: It's sort of interesting.
16 I'm hearing remnants of the debate that went all over
17 the old licensing process, the two step licensing
18 process verses the COL process which was just to avoid
19 these sorts of issues. But this case is under the old
20 process, at least up to this point.
21 >> JUDGE BARATTA: Can I ask a question of the
22 TVA. Under what conditions would TVA have to submit an
23 amendment to the existing OL or would they actually have
24 to submit a whole new OL? Let's say under the
25 assumption you decide to go forward with construction?

1 MS. SUTTON: Under the assumption you go
2 forward is part of the 120 day letter process that we
3 are going to describe as any number of requirements that
4 we identify new regulatory requirements. For example,
5 that's a bright line test, if you will, and has arisen
6 since the original OL was submitted. We would have to
7 amend the OL to address any new regulatory
8 requirements.
9 That's an example Judge Baratta where we
10 would be doing that.
11 >> JUDGE BARATTA: so to meet the deferred
12 plant status policy.
13 >> MS. SUTTON: That process helps us identify
14 what would hypothetically be necessary as well as other
15 regulatory requirements although the deferred plant
16 policy statement is not itself a regulation, it does
17 help guide us to determine what potentially would have
18 to be done to the pending OL application by way of
19 amendment.
20 >> JUDGE BARATTA: Question for the Staff
21 then. Assuming that they go forward with construction
22 completion of the plant and as far as that 120 day
23 notice, they do not identify seismic as an issue that
24 needs to be raised in the amended OL. There are
25 provisions in Part 54 looking at seismic issues for

1 plants that were considered after a certain date, I
2 don't know what the date is, maybe 1980 something, what
3 would the staff -- how would the staff determine
4 whether or not that was adequate?
5 >> MR. ROTH: In terms of adequacy from a
6 technical review, the staff has substantial experience
7 in reviewing seismic issues and certainly, staff is
8 aware of the particular issue here.
9 While I can't speak to exactly what the
10 staff's final review process will be, the Staff will
11 undoubtedly consider the new earthquake's information to
12 determine whether the new earthquakes are bounded by
13 previous analyses or whether the analysis need to be
14 redone.
15 >> JUDGE BARATTA: So in other words, even if
16 that were not part of the specifics in that letter, if
17 the Intervenor were to come in and say that the original
18 would not -- do not consider those, only consider X and
19 not Y, that that would be an issue that could be used
20 assuming it was proper?
21 >> MR. ROTH: That is correct. That's one
22 avenue someone could take. As Your Honor noted in the
23 scheduling order, there are other avenues including 2206
24 operating plant could have such an issue raised.
25 >> JUDGE BARATTA: Thank you.

1 >> JUDGE BOLLWERK: All right.
2 >> MR. ROTH: Pardon me, Your Honors. We also
3 have the ML number that you were looking for.
4 >> JUDGE BOLLWERK: All right.
5 >> MR. ROTH: That's Mike Lema 082730756.
6 >> JUDGE BOLLWERK: Okay thank you. Judge
7 Sager, anything you want to say at this point?
8 >> JUDGE SAGER: No.
9 >> JUDGE BOLLWERK: Mr. Dougherty, let me turn
10 back to you then.
11 >> MR. DOUGHERTY: Nothing further.
12 >> JUDGE BOLLWERK: I believe that concludes
13 our discussion about Contention 4. Let's then move on
14 to Contention 5. This one's called Lack of Good Cause
15 For Reinstatement. And the essence of this one dealt
16 with financial matters or questions of cost.
17 This one, we had set aside because there is
18 also a motion, both motion to supplement the record as
19 well as a motion to strike that were involved.
20 We were given 20 minutes aside for these --
21 for this particular argument. Mr. Dougherty, how do you
22 want to divide your time?
23 >> MR. DOUGHERTY: Ten and ten, please.
24 >> Judge Bollwerk: All right. Whenever
25 you're ready.

1 >> MR. DOUGHERTY: With all due respect to
2 my colleague, Mr. Zeller who drafted this contention, I
3 think it probably is not named in the most helpful way
4 possible since there is all these questions about
5 whether there is good cause for all of these
6 contentions. What this contention really goes to is
7 the fact that alternative sources of power, many of
8 which would be both environmentally preferable to
9 nuclear power and even less expensive are on the table.
10 And those have to be evaluated in the context of this
11 proposed CP reinstatement.
12 And we congratulate TVA for taking a very open
13 approach, a very public approach and really starting at
14 square and re-evaluating their needs and ways of
15 addressing demand.
16 And the integrated resource plan that was
17 circulated last summer, that's is subject of our amended
18 basis, they suggest that we are really putting
19 everything on the table, we don't know if we need one of
20 these four plants or two or three or four and we are
21 looking at hydro and solar and wind. We think that is
22 exactly the right way to do it in conjunction with the
23 NEPA process. And they've done pretty much the same
24 thing for their decision, whether to resume construction
25 at Bellefonte 1 and 2. They've said affecting NEPA

1 process, understand, we don't know if we're going to do
2 zero or one or two. That's how it should be.
3 We think the NRC as required by law and good
4 policy should be taking the same stance. All of these
5 things should be on the table. And it may well be that
6 TVA will decide that we don't need to build this plant
7 given that nuclear power now is costing what it is, 10
8 or 11 cents per kilowatt hour, and advances in
9 technology and changes in technology that we can turn to
10 wind or solar power.
11 If they do that, obviously, the environmental
12 advantages so we are saying that all these things must
13 be evaluated at the same time and a fair adjudication of
14 this case.
15 We think that the integrated resource plan
16 just should be part of the record. If our motion to add
17 it as a supplemental basis is denied, then, I think this
18 panel has the power to take judicial notice of it.
19 It is in the Federal Register. We are not
20 trying to pull a fast one here. We are just making a
21 point that TVA is very publicly re-evaluating all its
22 energy options and NRC staff may decide that the more
23 cost effective going about this than building plants
24 that have been sitting there for 25 years. That is the
25 sum and substance is the basis of our contention.

1 >> JUDGE BOLLWERK. All right, Judge Baratta?
2 >> JUDGE BARATTA: I'll come back.
3 >> JUDGE BOLLWERK: Okay.
4 I guess one of the -- you have attempted to
5 define this fairly broadly in terms of alternative
6 energy sources. TVA had information in its original
7 letter and which staff also looked at and discussed in
8 their safety evaluation that and maybe the environmental
9 system as well, questions about cost per kilowatt of
10 installed capacity.
11 That is not something you really addressed in
12 this contention. You didn't directly take on the TVA
13 assertion about installed -- the cost of installed
14 capacity per kilowatt hour?
15 >> MR. DOUGHERTY: That was our intent. Our
16 intent if you take an overall look at the final
17 delivered cost of electricity from these reactors and
18 compare it to the final delivered cost from alternative
19 sources, the reinstatement reconstruction option is more
20 expensive than environmentally. Or, and this is based
21 in part on the material that we submitted in the 3, 4
22 combined license proceeding for Bellefonte 3 and 4 in
23 which our expert, Dr. Makhijani submitted statements
24 explaining why it's cheaper for both 3 did 4 and 1 and
25 2.

1 >> JUDGE BARATTA: You're comparing apples and
2 oranges because you're comparing a plant at one time
3 that was upward of 80 percent complete. That was based
4 on 1978 dollars with plants being built with 2010
5 dollars which it's not going to cost that to build that
6 plant.
7 I saw what he had there and the cost numbers,
8 they are just irrelevant.
9 >> MR. DOUGHERTY: Well, then, maybe your
10 opinion judge, you may be right. I can't go to the
11 merits of what he is claiming.
12 I don't think you can assume that since one of
13 these plants is 78 percent and the other is 58 percent
14 complete that the cost of completing construction is
15 simply going to be 22 or 42 percent more respectively
16 for a lot of reasons. One is, A, they have been
17 inside these plants chopping them up. So who the heck
18 knows what needs to be done to complete construction.
19 And that could be a nightmare of engineering and
20 financial challenges.
21 Secondly, the plants have been sitting there
22 for 20 years subject to entropy so there is just no way
23 of knowing. And finally, this is a very unusual reactor
24 design, developed by Wilcox 205. It's unparallel in
25 this county. There are a lot of uncertainties here in

1 that should go into any calculation of cost.
2 Beyond that, I'm at the limit of my ten here
3 but we do think for all these reasons, this is an issue
4 that should be considered admissible.
5 >> JUDGE BOLLWERK: Anything further?
6 Judge Sager?
7 >> JUDGE SAGER: Yes, Judge Bollwerk. As I
8 understand it, what you're saying is you're happy with
9 the procedure that TVA is taking a look at all the
10 resources. We've also heard that the operating stages
11 will all be reviewed any way and would lead to TVA
12 responsibility.
13 So then what is the compelling argument to do
14 this right now?
15 >> MR. DOUGHERTY: Well, actually Judge, we're
16 saying just the opposite. We're saying that we don't
17 know if it's TVA's responsibility or not, but they are
18 doing it. We commend them for doing it. We think it is
19 a rational way to approach their energy challenge.
20 On the other hand, we do believe that the NRC
21 is required to do it. This is part of any NEPA
22 review and it's part of the general reactor review
23 criteria is to evaluate the alternative sources. So
24 it's actually just the opposite. We think TVA is not
25 required to do this and NRC is.

1 >>JUDGE SAGER: Okay, thank you.
2 >> JUDGE BOLLWERK: Is the TVA process a
3 public process? You have an input into it or is it
4 something TVA is doing internally --
5 >> MR. DOUGHERTY: Well, if you asked me
6 yesterday, I would say it's public process. We see
7 public communications going on. Then this morning,
8 they've done an environmental assessment on CP
9 reinstatement. I was surprised. I guess it's in the
10 system somewhere.
11 So I can't really speak for what is happening
12 behind closed doors but certainly some of their process
13 is being conducted in the open.
14 >> JUDGE BOLLWERK: We may have to talk to TVA
15 about that. Well, that I guess what you just said
16 raised a question for me. With respect to environmental
17 assessment that we mentioned it earlier where they are
18 looking at one plant, either one B&W, one AP1000, or
19 that's not something that you been part of -- you
20 haven't filed comments I take it on that?
21 >> MR. DOUGHERTY: Just to get the right
22 term, this is the draft supplemental EIS?
23 >> JUDGE BOLLWERK: Yes, Correct.
24 > MR. DOUGHERTY: Yes, we have been involved
25 in that and have submitted comments.

1 >> JUDGE BOLLWERK: I see. But the EA in
2 terms of reinstatement.
3 >> MR. DOUGHTERY: That is something that will
4 happen.
5 JUDGE BOLLWERK: You have in terms of the CP
6 that other environmental impact assessment that is going
7 on --
8 >> MR. DOUGHERTY: We had a hearing over the
9 winter and we had lots of our members down there.
10 >> JUDGE BOLLWERK: All right. Anything
11 further Judge Baratta?
12 >> JUDGE BARATTA: No.
13 >> JUDGE BOLLWERK: Judge Sager?
14 >> JUDGE SAGER: Nothing further.
15 >> JUDGE BOLLWERK: All right, let's then turn
16 to TVA, please.
17 >> MR. CHANDLER: Thank you, Mr. Chairman. My
18 name is Lawrence Chandler. Once again, the focus of
19 this contention has morphed somewhat from what it
20 started to be in the May 8th petition to something
21 somewhat different, although candidly, something that
22 more accurately reflects the substance of those
23 contentions itself.
24 The contention goes to alternatives. It goes
25 to cost. It does not go at all to TVA's showing of

1 good cause.
2 I think before I get further into discussion,
3 I think what Mr. Dougherty just explained makes very
4 clear that the process and documentation prepared by TVA
5 in connection with not only the instant reinstatement
6 request but generally in connection with its energy
7 development is a public process.
8 The documents are available. The public does
9 have an opportunity to fully participate in the
10 development of those documents and contribute to TVA's
11 thoughts in going forward on energy production.
12 The IRP is a good example. The IRP is part
13 of a process that TVA has embarked on as part of a much
14 larger program of rethinking its energy needs. But
15 it's outside the scope of the NRC's licensing process
16 and it's certainly outside the narrow scope of this
17 reinstatement proceeding itself.
18 What we repeatedly hear, we heard yet once
19 again, that the NRC needs to put all of these things on
20 the table. And that's simply not the case.
21 This case is focused on TVA's statement for
22 good cause in this proceeding.
23 This is not an opportunity to periodically
24 review health and safety issues, nor is it an
25 opportunity to periodically review the cost of this

1 facility or possible alternatives to it.
2 Opportunities for that to some extent present
3 themselves in the future should TVA proceed with its
4 operating license application and otherwise admissible
5 contentions as proffered in that regard.
6 But this is not simply the opportunity to do
7 that.
8 One of the points they make in their petition
9 is that at the end of the day, Bellefonte Units 1 and 2
10 is economically obsolete before they come on line which
11 they contend weighs against good cause.
12 But again, as I mentioned a second ago, that
13 simply is not within the scope of this proceeding.
14 It does not raise a genuine dispute material
15 to any finding that must be made in this proceeding as
16 required by 10 CFR 2.309 (f (1)(iii)(iv) or (v).
17 The reasons given by TVA for seeking
18 reinstatement were explained by Ms. Sutton earlier. To
19 basically restate them, TVA has asserted that there are
20 generally signs of increasing demand. TVA notes that
21 progress has been made in the construction of these
22 units which have a bearing on the overall cost of
23 production at the end of the day.
24 The existing investment makes it possible
25 that future costs of restored capacity would be lower

1 than new construction now on the table . And that the
2 possible future problems with access to supplies and
3 components which could contribute to increased cost of
4 production by new facilities.
5 Overall, TVA explained in its August, 2008
6 request that reinstatement of the CPs was a necessary
7 precursor to subsequent determination of whether units
8 1 and 2 had potential options for base-load capacity.
9 And as I said before, at bottom, though Petitioners
10 would have this Board -- the Petitioners would have this
11 Board do exactly what it should not and that is
12 superintend the business judgments of the applicant.
13 The commission made quite clear that is not part of the
14 process.
15 Petitioners focus exclusively on cost
16 projections for alternative and for alternative energy
17 sources.
18 In the Bellefonte Units 3 and 4 Environmental
19 Report, this is not performed for dealing with costs
20 related to Bellefonte Units 3 and 4.
21 In fact, if you look at the nature of their
22 proposed contention, it is basically a repackaging of
23 their proposed Contention, 16 in Bellefonte Unit 3 and 4
24 proceeding.
25 And I think Mr. Dougherty recognizes that.

1 He's spent a great deal of time in connection with that
2 proceeding. While portions of that contention were
3 admitted, the aspects addressing the various subjects
4 that they seek to raise here as I understand it were
5 rejected in that proceeding.
6 But left unexplained at the end of the day is
7 how what they want to raise is material to any finding
8 this Board must make.
9 That is the Petitioner's burden and they have
10 not carried it. And for that reason, this contention
11 should be rejected.
12 In their reply we note for the first time and
13 this is not something found in the initial petition.
14 They contend that there is really no relevant
15 guidance on good cause. And I think we heard a great
16 deal of discussion earlier, there is not much I would
17 like to add at this point.
18 But the Commission has made abundantly clear
19 in many prior decisions, that the scope of the CP
20 extension proceeding and likewise, reinstatement
21 proceeding is very narrowly focused on the good cause
22 provided by the Applicant.
23 I would note that in prior in instances , CP
24 extensions have been sought for a variety of reasons and
25 many of them have based on economic judgment, others

1 based on technical issues which require extension of the
2 construction periods originally proposed.
3 In fact, if you look at the history of the
4 Bellefonte Unit 1 and 2, CP extension, they have also
5 been based on largely financial judgment, based on
6 changes and need for power and cost projections that
7 have been made over time.
8 Despite the rhetoric, Petitioners at the end
9 of the day, complain that simply the wrong standard is
10 being used here; that in fact the right standard for
11 issuance of construction permits from the outset as if
12 they were holding new licensing actions.
13 Commission's decision in CLI 1006 makes clear
14 that is simply not the case. And for that reason,
15 should be rejected. The supplement they filed in July
16 of 2009 adds really nothing to that.
17 The fact that TVA has embarked, as I
18 mentioned earlier on the IRP process for its greater
19 needs does not change the scope of matters that is
20 properly before this agency.
21 In terms of our motion to strike that
22 supplemental information, I don't think there is any
23 further that needs to be added to what we argued in that
24 motion so I won't dwell on that. In short, TVA
25 initiated an update to its broad system-wide resource

1 plan is simply not relevant or material to TVA's
2 statement of good cause in this proceeding. And I
3 would point out to answer the question the Board has
4 raised on page 7 of its Order, we do believe that to the
5 extent an admissible contention can be framed, the
6 operating license proceeding would be an appropriate
7 occasion for such consideration should TVA ultimately
8 decide to pursue an operating license for these
9 facilities.
10 >> JUDGE BARATTA: I was very confused about
11 why economic considerations are not part of the good
12 cause. It seems as though, there are several points in
13 the TVA August 26, 2008 letter where it talks to those
14 types of issues.
15 >> MR. CHANDLER: The economic considerations
16 that are posed as good cause here are different than
17 the considerations that Petitioners would bring to bear
18 here.
19 What they are trying to raise really are
20 issues related to relative cost compared to alternative
21 suggestions that alternatives are now more cost
22 efficient than with the completion of construction of
23 Bellefonte Unit 1 and 2.
24 That is not part of the good cause showing in
25 this case.

1 >> JUDGE BARATTA: But as part of their
2 pleading they also raise, just the overall cost.
3 >> MR. CHANDLER: Right, and I think part of
4 what TVA is trying to do at this point in time is
5 reassess what the total costs would be by doing that.
6 The cost of completion, not the relevant cost of
7 generating power.
8 >> JUDGE BARATTA: Well, admittedly, they
9 argue that too, but they also arugue absolute cost in
10 their pleading.
11 >> MR. CHANDLER: Again, that is not an issue
12 focused on reinstatement construction permits here. It
13 is an issue that to the extent it has any particular
14 relevance in the context of an operating license
15 proceeding.
16 >> JUDGE BARATTA: Your letter says a major
17 factor driving this effort is the change in power
18 generation economics since 2005. That seems to me to be
19 opening the door at this point for challenge of
20 reinstatement of their good cause.
21 >> Mr. Chandler: I think it continues beyond
22 that simple statement and explains what the cost
23 factors are that are raised and those factors are not
24 taken out I think by the Petitioners in their petition.
25 >> JUDGE BARATTA: It goes on to say that the

1 cost for kilowatt to install capacity upon generational
2 targets has continued to increase. So you raise a
3 number of the same issues that were raised by the
4 Intervenor. I'm looking at the second and third
5 paragraph on the August 26 letter and I'll see what page
6 is that on --
7 >> JUDGE BOLLWERK: On page 5, I think if
8 we're looking at the same thing.
9 >> MR. CHANDLER: Bear with me one second.
10 >> JUDGE BARATTA: Take your time. Yes, page
11 five.
12 >> MR. CHANDLER: I'm sorry, you were
13 referring to "Since that decision was made? "
14 >> JUDGE BARATTA: "Since that decision was
15 made in 2005," that was one.
16 And the preceding paragraph, actually, the
17 first full paragraph on the page, "Major factor driving
18 the effort is the change in power generation, economics
19 since 2005."
20 And it also mentions the problems with
21 suppliers. And then later on in the third full
22 paragraph, it discusses as a result of the potential for
23 low cost kilowatt. It just seems like you're arguing
24 the same points.
25 >> MR. CHANDLER: I think Your Honor, the

1 point that we make in our response on page 40, responds
2 to the points you're making. We note that Petitioners
3 seek to directly challenge financial data -- I'm
4 reading from a prior pleading -- financial data and
5 cost analysis for nuclear power plants and alternative
6 energy sources contained in the BLN Unit 3 and 4
7 Environmental Report.
8 It is not related to 1 and 2. At the same
9 time, they completely ignore TVA's stated reasons for
10 seeking reinstatement of the CPs for Bellefonte's Unit 1
11 and 2. To determine whether Bellefonte units 1 and 2
12 should be regarded as potential base-load generating --
13 as a potential base-load generating option.
14 Consequently, Petitioners again, flout the Commission's
15 March 2000 order by failing to squarely challenge or
16 otherwise controvert TVA's good cause justification as
17 reinstatement of the CP.
18 In other words, they are not challenging the
19 assertions that TVA has made as a basis for seeking
20 reinstatement for Units 1 and 2.
21 Rather, they are looking at cost data and
22 suggesting that their flaws in the cost data reflected
23 the Units 3 and 4, combined operating license proceeding
24 is a separate proceeding in which instance,
25 consideration of costs are valid considerations for

1 initial licensing of a facility, not the broad question
2 of cost -- excuse me, not in the narrow context of what
3 costs or how this is a factor related to reinstatement.
4 >> JUDGE BARATTA: What I'm trying to
5 determine is what constitutes good cause. And it seems
6 from your letter that the potential for Bellefonte's
7 Unit 1 and 2 would be economically superior, is in fact
8 a consideration in going forward with reinstatement
9 under the good cause.
10 I'm not at all discussing what the Intervenor
11 has put forth relative to the numbers in their
12 contention. But what I'm trying to determine is what
13 constitutes good cause.
14 It seems like your letter on the economic side
15 is something that goes into the fact of good cause
16 determination.
17 >> MR. CHANDLER: It is a element of good
18 cause in a sense. But what is missing conspicuously,
19 missing in our view is a basis for their suggestion that
20 the cost and considerations given by TVA for Units 1 and
21 2 are wrong.
22 It's not just the subject matter is
23 necessarily categorically excluded, but there are
24 additional factors that have to be addressed in
25 connection with the contention that they simply have not

1 satisfied.
2 >> JUDGE BOLLWERK: The question about the
3 integrated resource plan, that process is ongoing, I
4 take it?
5 >> MR. CHANDLER: Yes.
6 >> JUDGE BOLLWERK: And you have a sense of
7 when it will be completed?
8 >> MR. CHANDLER: That I'll ask Mr. Vigluicci
9 to address.
10 >> MR. VIGLUICCI: Just a second.
11 >> JUDGE BOLLWERK: Surely.
12 >> MR. VIGLUICCI: I know we have not yet
13 issued the draft version yet of the IRP.
14 I think later on this year, it is scheduled to
15 be released and I think there is at least a year period
16 before the issuance of a final IRP.
17 >> JUDGE BOLLWERK: Probably if I heard you,
18 looking at the end of 2011, that draft at the end of
19 this year, final by the end of 2011 approximately?
20 >> MR. VIGLUICCI: I think mid to late part
21 of 2011.
22 >> JUDGE BOLLWERK: How would TVA propose to
23 integrate whatever analysis, lessons learned,
24 information it receives from that process, back for
25 instance, the COL 3 and 4 proceeding? I mean , there

1 are a number of statements made obviously in the
2 environmental report you submitted that had statements
3 about costs and alternative energy sources.
4 >> MR. VIGLUICCI: I think we have to look at
5 what we came up with and then make a decision whether or
6 not that was a significant information and we have to
7 update our COL application at that time.
8 >> JUDGE BOLLWERK: And I take it then that
9 would be integrated as well into the operating license
10 application in this case?
11 >> MR. VIGLUICCI: That's correct.
12 >> JUDGE BOLLWERK: More direct question with
13 respect to supplementing a contention: What's the
14 proper process here? If something -- an Intervenor
15 comes up with something they want to add, what should
16 they do?
17 >> MR. CHANDLER: Well, I think as we pointed
18 out in our motion to strike, that should have been
19 accompanied by a motion. There is not just simply an
20 unbridled opportunity to continuously supplement the
21 Petition to Intervene when something strikes a
22 Petitioner as warranting introduction. It is a process
23 for doing so.
24 They failed to follow that process and for
25 that reason, should be stricken.

1 Beyond that, we note that it's also flawed in
2 that it really has no direct bearing on it and a good
3 cause showing that's required in the context of
4 construction permit reinstatement proceedings such as
5 this.
6 >> JUDGE BOLLWERK: My recollection is they
7 did make an direct attempt to address the issues in
8 2.309 and go with supplementation or amending or filing
9 a new contention.
10 >> MR. CHANDLER: I think they lip serviced,
11 but I don't think they subsequently addressed the
12 requirements of that.
13 >> JUDGE BOLLWERK: Your point more directly
14 is that there should have been a motion rather than a
15 document supplementation?
16 >> MR. CHANDLER: I think they needed to seek
17 leave to supplement, that's correct and they failed to
18 do so.
19 >> JUDGE BOLLWERK: All right. Judge Baratta,
20 any other questions?
21 >> MR. CHANDLER: Let me just reiterate if I
22 may, we did fully respond to the proposed contention as
23 supplemented in our Answer that was filed on January
24 29th.
25 >> JUDGE BOLLWERK: All right, thank you.

1 Judge Sager?
2 >> JUDGE SAGER: Nothing here.
3 >> Judge Bollwerk: All right. Let's turn
4 then to the NRC staff.
5 >> MR. ROTH: David Roth for the staff.
6 In general, Contention 5 in its effort to
7 attack good cause as the Staff have pled is targeted
8 towards Units 3 and 4, rather than towards the stated
9 reasons for Units 1 and 2.
10 On that, with regards to how Units 3 and 4
11 cost estimates play into Units 1 and 2 reinstatements
12 economic considerations, it appears that TVA and the
13 Intervenors are that there are changes and TVA's request
14 to reinstatement was so it could go forward and consider
15 the changes that had taken place.
16 Further, I need to make sure everybody
17 understands what happens at the operating license
18 application stage.
19 Petitioners state that NRC is required to
20 review the NEPA power and energy alternatives, Staff
21 operating license required to review it, the standards
22 and Staff has just filed brief on this in Watts Bar
23 proceeding and SACE is party to the proceedings as is
24 TVA. But the standards at the operating license stage
25 do not require the environmental report or the Staff's

1 EIS to include a need for power or alternative analysis.
2 Commissioner Jaczko noted this in page five of
3 his Commission voting record actually. So nobody could
4 claim to be surprised by this information.
5 Should at the EIS stage, somebody wish to
6 bring forward a need for power or alternative analysis
7 issue, then through Commission case law, there is a
8 five part -- pardon me, a three part test they have to
9 show that the plant that is proposed and it's already
10 substantially constructed at this point, would not be
11 used to meet energy demands or would not be used to
12 replace existing or cost- effective or less cost
13 effective power. And last, also the plant being
14 proposed would not presently exist a viable energy
15 alternative to the plant being proposed that would serve
16 the area and the same service area.
17 And that's to get a waiver request in order
18 to bring that issue into the proceeding.
19 Otherwise, pursuant to 5195(b), Staff's EIS
20 will not continue the discussion of energy alternatives
21 for nuclear power.
22 Likewise, in this narrow scope proceeding of
23 good cause, the Staff is not required by any amount of
24 regulation to include or address the issues of need for
25 power. Correspondently, it's not part of the good

1 cause consideration at the discussions of Units 3 and 4
2 and its information for good cause.
3 >> JUDGE BOLLWERK: All right. Judge Baratta,
4 anything?
5 >> JUDGE BOLLWERK: Judge Sager?
6 >> Judge Sager. I have a couple of questions.
7 You mentioned that the Staff apparently is not
8 going to be going into alternative need for power in an
9 operating license case for Units 1 and 2.
10 So I take it whatever then came out of the IRP
11 would or wouldn't be integrated into your analysis in
12 some way?
13 >> MR. ROTH: That would be generally
14 correct. Of course we would have to see what exactly
15 what it is, the absence of the Commission direction to
16 the contrary. The Staff's EIS does not contain the need
17 for power or energy alternative discussions.
18 >> JUDGE BOLLWERK: That's under Part 50
19 license, right? No, Part 52 is a different matter is,
20 that correct?
21 >> MR. ROTH: Correct, this is relevant to the
22 environmental reviews associated with Part 52 license.
23 >> JUDGE BOLLWERK: So when the IRP comes
24 out, that may well have an impact relative to what the
25 staff is doing in connection with Units 3 and 4?

1 >> MR. ROTH: That may be true, Your Honor.
2 >> JUDGE BOLLWERK: What's the staff position
3 relative to the proper way for Petitioner to amend their
4 intervention petition to raise additional information to
5 put something before the Board?
6 >> MR. ROTH: Well, it was a unusual
7 situation. It was a lengthy period of time between the
8 initial pleadings during which time the Commission
9 stated that there should by no further filings on these
10 matters. Thus, for this particular one, it's arguably
11 improper for them to file additional issues.
12 >> JUDGE BOLLWERK: Well, from their
13 perspective, they were not putting out additional
14 issues. They were putting out addition information to
15 support an issue they had already framed.
16 On that question of timing, are you telling me
17 it is a question of timing because the Commission said
18 everything is on hold?
19 >> MR. ROTH: Yes, Your Honor.
20 >> JUDGE BOLLWERK: So if that hold hadn't
21 been in place, what would have been the proper way to it
22 then from your perspective?
23 >> MR. ROTH: Your Honor, if the hold had
24 not been in place, then they would have to meet the
25 standards for many of the contentions in the 309 or the

1 standards for initial filings in case somebody had not
2 achieved party status which at this point, hadn't
3 achieved party status.
4 >> JUDGE BOLLWERK: And do they need a
5 motion or can they just file a document that would
6 discuss the standards and call -- the pleadings says it
7 is a supplement?
8 >> MR. ROTH: The practice in different
9 proceedings has been done differently by Petitioners but
10 generally, there needs to be leave from Your Honors to
11 file a motion as well as the initial filing.
12 >> JUDGE BOLLWERK: All right. Anything
13 further, Judge Baratta?
14 >>> JUDGE BARATTA: Nothing further.
15 >> JUDGE BOLLWERK: Judge Sager?
16 >> JUDGE SAGER: Nothing further.
17 >> JUDGE BOLLWERK: All right. Let me then
18 turn back to Joint Petitioners.
19 >> MR. DOUGHERTY: Thank you Judge Bollwerk.
20 Let me first take on the question of
21 supplemental basis. People say that these licensing
22 proceedings are costly and labor intensive, and boy,
23 there is no better example than this. We just had a
24 one-and-a-half page Federal Register Notice and sent
25 send it in to make sure it's on the record. And what

1 that prOduces just a blizzard of motions to strike and
2 challenges and legal argumentation.
3 Counsel for TVA said, we agree with that, that
4 every one knows about it and as I said before, I think
5 it's well within the authority to take judicial notice
6 of anything that's on the Federal Register.
7 So, I'm just disinclined to continue to
8 fight over this. Now, I was fascinated to hear that
9 good cause as construed by TVA does not involve matters
10 related to TVA business judgment.
11 We agree with that. Good cause must mean
12 something else. Certainly, we're not here to review
13 TVA's business decisions. We don't have expertise in
14 that.
15 But I think what this really demonstrates, is
16 no one really knows. We're all at sea here trying to
17 figure out what the Commission sent us off to do. And I
18 think that question needs to be resolved as a threshold
19 matter. I think the way for to us to really
20 characterize our claim here is that TVA has no idea what
21 it 's going to do. That is a good thing.
22 There were a lot of choices. There's a lot
23 of cost in the environmental impact associated with this
24 choice. And It's going back to the drawing board
25 saying what are we going to do? Are we going to build

1 one or four or something in between, or zero.
2 Are we going to wind? Are we going to go to
3 Solar? We're going to figure this out. And what the
4 Associated Panel did in 3, 4 proceedings said, when you
5 guys figure that out, come back to us and we will start
6 to litigate this case. But in the meantime, things are
7 so uncertain that we don't have anything to focus on.
8 And I think if it makes sense to put the 3, 4
9 proceeding on hold, then I don't see how we can reach a
10 different result here.
11 Now, the way to characterize our contention is
12 that all of these alternatives must be evaluated by the
13 Staff. It's certainly being evaluated by the Staff and
14 TVA and we didn't think it would be appropriate for
15 this Board to say, none of these questions are relevant,
16 and yes, we are going to affirm reinstatement of the
17 CPs.
18 At a minimum, these issues are in play and
19 actually formed a good reason to postpone adjudication
20 of these questions until the applicant figures out what
21 the heck it wants to do. That concludes my rebuttal.
22 >> JUDGE BOLLWERK: All right. Judge Baratta?
23 >> JUDGE BARATTA: You've heard the claim
24 made that your basis for this contention really used
25 information that's not germane, namely, the cost of

1 Units 3 and 4.
2 Do you care to respond?
3 >> MR. DOUGHERTY: Yes, we cited in our papers
4 other materials outside the scope of Dr. Makhijani's
5 affidavit including the Keystone documents, a fairly new
6 study of cost of nuclear power. And we intend to find
7 other information to present to the panel.
8 But it's more than just 3 and 4. As I said
9 before, no one know and I don't think any one has
10 alleged how much it's going to cost to complete
11 construction of Units 1 and 2. That's probably
12 surrounded by more uncertainties than 3 and 4 even
13 though they are in large measure completed, because in
14 large measure, they've been deconstructed. And the
15 whole idea of trying to resume construction on the plant
16 after it been rusting away for 20 years, no one knows.
17 And that's part of the equation here; how much will wind
18 cost? How much will solar cost, and how much is it
19 going to cost to reinstate -- to resume construction of
20 these two units?
21 You can't consider those questions without
22 putting everything on the table at the same time.
23 So Makhijani's information doesn't go to that
24 cost of resuming Construction of 1 and 2. But other
25 information -- somehow I think the burden should be on

1 TVA and the Staff, probably TVA to prove to this panel
2 what the cost is going to be. And when that
3 information is part of the record, then, it can be
4 evaluated in light of the cost of the alternative.
5 >> JUDGE BARATTA: Well, we have contention
6 admissibility rules we have to follow. And one of those
7 is you have to provide a basis which is expert opinion
8 and or facts.
9 I'm just trying to get at what are your facts
10 or expert opinion that supports that and it seems to be
11 based upon the cost of construction, is what I just
12 heard.
13 MR. DOUGHERTY: You will find a citation in
14 our petition to the studies that were done within the
15 past year by the keystone Center. And we think that has
16 a lot to do with the final delivered cost of nuclear
17 power.
18 And I'm afraid that beyond that, Judge
19 Baratta, I'm at the limit of my technical understanding.
20 I'll ask my colleague Mr. Zeller if he wants to weigh
21 in.
22 If that would be okay, he is the author of the
23 contention and frankly knows more about this than I.l.
24 >> JUDGE BOLLWERK: Mr. Zeller is not -- he's
25 a representative of the party. We said one counsel or

one representative per party on a particular contention.

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

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

>> JUDGE BOLLWERK: I don't think we can. I'm not going to put him under oath. So anything Staff want to say?

>> MS. JONES: We have no objection.

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

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

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

So, it's not specific only to AP1,000 Units 3 and 4 which are also co-located with these Units 1 and 2.

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

1 >> JUDGE BOLLWERK: All right, let me turn to
2 TVA and the Staff to see if you want to respond to that
3 and then I'll give you a final opportunity.
4 Anything TVA want to say about what we just
5 heard?
6 >> MR. CHANDLER: No, sir.
7 >> JUDGE BOLLWERK: Staff?
8 >> MR. ROTH: Your Honor, I would just
9 reiterate again, that just as absent a well pled waiver,
10 the prima facie evidence, showing why the Commission
11 rules should be waived, that it's needed for power and
12 energy alternatives which would broadly encompass power
13 generation, the cost of alternative power are not
14 something the Staff will have in its own EIS should TVA
15 come in and make an application for it.
16 >> JUDGE BOLLWERK: All right, anything
17 further the Petitioner want to say on this point?
18 >> MR. DOUGHERTY: Would it be okay if I
19 address that, Your Honor?
20 >> JUDGE BOLLWERK: Yes.
21 >>MR. DOUGHERTY: The information that we
22 submitted about cost was derived in part on the work
23 that Dr. Makhijani got on 3 and 4. But we asked him to
24 review that information in the context of the 1, 2
25 context and he is available to us to be retained to

1 testify specifically in the context of 1 and 2. That is
2 the information we intend to offer to the panel if we
3 establish the admissibility of this contention.
4 >> JUDGE BOLLWERK: All right. Judge
5 Baratta, anything further?
6 >> JUDGE BARATTA: Nothing.
7 JUDGE BOLLWERK: Judge Sager, do you have
8 anything?
9 >> JUDGE SAGER: Nothing further.
10 >> JUDGE BOLLWERK: At this point, it is about
11 a quarter to 12:00. I think the next contention we are
12 looking at, Number six will be one that first of all, we
13 set it for 20 minutes per side. And I suspect it may
14 involve some lengthy discussion given I think one that
15 goes to the heart of some of the Petitioner's issues.
16 My suggestion would be for to us go ahead and
17 take a break at this point. Is that all right with you
18 Judge Sager?
19 >> JUDGE SAGER: That's fine. What time shall
20 I come back?
21 >> JUDGE BOLLWERK: Why don't we go ahead and
22 make it easy for everyone. Let's say let's come back
23 at one o'clock. I think it's a little more than an
24 hour. There is a cafeteria here in the building so
25 hopefully, it should not be a problem for folks to get

1 in to that or hopefully, one of the restaurants in the
2 area. So let's go ahead and take a break. That gives
3 us a little bit more than an hour. We'll be back at
4 1:00 p.m. eastern time.
5 Thank you everyone.
6 (Whereupon luncheon recess was taken)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 JUDGE BOLLWERK: Judge Sager, everything all
2 right where you are?
3
4 JUDGE SAGER: Just fine. I don't see your
5 picture yet, but I assume it will come up soon.
6 JUDGE BOLLWERK: And you are hooked in to the
7 teleconference?
8 JUDGE SAGER: I am hooked into the telephone
9 on mute and I can see your picture.
10 JUDGE BOLLWERK: Thank you. Back on the
11 record if we could, please.
12 Good afternoon, everyone. We're here to --
13 this afternoon, to continue the official prehearing
14 conference and oral arguments on the Bellefonte Units 1
15 and 2 Construction Permit Reinstatement proceeding.
16 The arguments with respect to the admissibility of
17 Contentions 6, 7, 8 and 9, we will talk about this
18 afternoon.
19 Again, a reminder, cell phones should be off
20 or on vibrate. And no cell phone conversations
21 obviously in this room while the Board is in session.
22 With respect to Contention 6, the title, the
23 reinstatement was improper because TVA has not and
24 cannot meet the NRC's quality assurance and quality
25 control QAQC requirements.

1 Mr. Dougherty, I turn to you.
2 MR. DOUGHERTY: Mr. Chairman, when I explained
3 it to my wife this involved two nuclear reactors that
4 had been partly completed, left as rust for 20 years and
5 abandoned for three years and they are trying to resume
6 construction. Her response is, well, are you kidding.
7 What she meant was how do they maintain quality
8 assurance, because that's the question that leaps out to
9 everyone when they hear the circumstance. As you
10 suggest, this is at the heart of this case and our
11 contentions.
12 Just as Ford Motor Company says quality is job
13 one, the Nuclear Regulatory Commission says that quality
14 assurance is criteria one, indeed, it's GDC number one.
15 Quality assurance is more than just the
16 regulatory requirement. It's a philosophy, a culture.
17 It's a stance that an applicant has to stay in
18 consistently. It's, kind of, like a chain of custody
19 for evidence or for samples.
20 Chain of custody has to be maintained the
21 entire process from the time the sample is taken until
22 it is tested and admitted into evidence, and if at any
23 point you lose chain of custody, the quality of that
24 sample has been eliminated. There is none. You have to
25 have chain of custody the whole time. The same is true

1 of quality assurance. If there is a gap in quality
2 assurance, there is no quality assurance and you have to
3 go back and start from the beginning. This concept is
4 laid out by our expert witness, Mr. Gunderson, in his
5 affidavit, and in fact this is emphasized by the NRC
6 staff member, Joseph Williams, who said not only has the
7 QAQC process broken down entirely but there's actually
8 evidence that items in the reactors have degraded and
9 been compromised.
10 So it's more than a matter of not being able
11 to prove everything is meeting the NRC standards, but in
12 fact certain things are not. That's the problem here.
13 There's been filings recently from TVA suggesting they
14 are back on track and maintaining the right kind of
15 documents, but that is not good enough. You cannot go
16 back and restore quality assurance once it has been
17 lost.
18 There are a lot of examples of that. General
19 design Criterion 13 says for a lot of components there
20 is a special protective environment that must be
21 maintained. A lot of components have parameters whether
22 it's temperature ranges, humidity, ph, the certain --
23 halogen lights emit halogen gasses which can react with
24 crucial reactor components, and as a result there is a
25 prohibition on the use of halogen lamps.

1 But for the three years, when this plant was
2 cold and dark and outside the NRC's regulatory
3 jurisdiction, no one knows if they were using halogen
4 lamps or if they maintained humidity levels or
5 temperatures. Every component has been compromised or
6 may have been compromised and as Mr. Williams suggests
7 in his statement, the only way to verify this plant can
8 be constructed safely is to start from the beginning and
9 make the applicant prove to the NRC staff every SSC out
10 there meets all appropriate quality requirements.
11 Too bad that there's not a way to go back and
12 fix that. It would make more sense if somehow that gap
13 could be revisited, cured, but you can't. And that
14 point has been emphasized by Chairman Jaczko, as well.
15 We lost quality assurance.
16 All I have to really say about that is Mr.
17 Williams has gotten plaudits for his coming forward and
18 will probably get a plaque he can put on the wall, but
19 none of that matters. What matters is that you as the
20 Licensing Board, pay attention to what they are saying.
21 It has to be considered. If everything he is says is
22 swept under the rug, then it is just a waste.
23 So that concludes my opening remarks on QAQC.
24 Thank you.
25 JUDGE BOLLWERK: All right. Let me turn to

1 Judge Baratta. Do you have questions?
2 JUDGE BARATTA: No, not at this time.
3 JUDGE BOLLWERK: Judge Sager?
4 JUDGE SAGER: Nothing.
5 JUDGE BOLLWERK: You had mentioned the fact
6 that there had been some things done recently that --
7 well, in fact I guess as you are aware, they requested
8 and were given deferred status which included, I guess,
9 the indications being that the QAQC, there was a program
10 in effect and, in fact, they were going to take actions
11 consistent with that to bring everything back up to
12 snuff, as it were.
13 How does that affect your contention? You
14 have not filed anything further or discussed any of that
15 information.
16 MR. DOUGHERTY: No, our contention stands.
17 What our expert tells me is that, and again, sorry to
18 repeat myself, it is like chain of custody. Once it has
19 been interrupted, it can't be restored. So getting back
20 on track, getting back into compliance with the QAQC
21 protocol doesn't recover the data for the missing three
22 years. We don't know what happened, we don't know if
23 parts corroded. We know parts were cannibalized, but
24 that's just a dark period and that invalidates any
25 attempt now.

1 We would have to go back on component by
2 component basis, probably with direct physical
3 examination to make sure that it's still in operative
4 and in good shape. You cannot -- QAQC lets you assume
5 that once you put things in this place, they remain
6 workable. Those assumptions cannot be made any longer.
7 JUDGE BARATTA: I don't disagree. I agree 100
8 percent with you, but I do see in the letter from TVA
9 that it says equipment not subject to preventive
10 maintenance under a layup progam would be entered in the
11 program and prohibited from being placed in service
12 without further evaluation, and having been fully
13 restored and replaced. Isn't that what you are saying,
14 and Mr. Gunderson's saying , you got to check out the
15 stuff that hasn't been maintained?
16 MR. DOUGHERTY: Yes, but in the context of
17 adjudicatory proceeding. The burden should be placed on
18 them to demonstrate to this panel they have, in fact,
19 done that and they can now demonstrate that everything
20 meets quality requirements.
21 JUDGE BARATTA: That is not quite what your
22 contention said, though. Well, it did not even
23 acknowledge the existence of a corrective action
24 program.
25 MR. DOUGHERTY: Well, there may have been a

1 lot of facts and existence we didn't acknowledge, but
2 our central point remains unaffected by that. If once
3 interrupted, I don't know actually what corrective
4 action is. I don't know if that purports to "cure"
5 every problem that may exist. We've been told by our
6 attorneys it can't be cured, you have to go back to
7 square one and recertify how every bolt was turned,
8 every component was tested. It's thought my
9 understanding that is what they have in mind, but if
10 that's incorrect, I'll have to stand corrected.
11 JUDGE BOLLWERK: : Anything further?
12 JUDGE BARATTA: : I refer, again, to page six.
13 You need to read that. That seems to be -- page six of
14 the letter dated the 26th of August.
15 MR. DOUGHERTY: 2008?
16 JUDGE BARATTA: Yes.
17 MR. DOUGHERTY: I'll do that. I was going to
18 suggest I do it on rebuttal.
19 JUDGE BOLLWERK: : Judge Sager, anything you
20 have at this point?
21 JUDGE SAGER: : No, nothing for me. Thank
22 you.
23 JUDGE BOLLWERK: : We will go to TVA and come
24 back to Petitioners if they have any response to that.
25 JUDGE BOLLWERK: :

1

2 MR. CHANDLER: In the originally proposed
3 contention, we started with a suggestion that since
4 termination of the construction permits in 2006 the
5 facility was not maintained in accordance with the
6 requisite NRC quality assurance requirements, or subject
7 NRC oversight, and, therefore, the material condition is
8 indeterminate, though we hear that the plants have not
9 been covered by quality assurance program for 20 years.
10 That's clearly not the case. Replete throughout the
11 August 2008 letter, requesting reinstatement of the
12 construction permits and as represented in the answer to
13 the petition and other documents, the very purpose for
14 which TVA has sought reinstatement is to reexamine the
15 plant, reestablish and determine what it's material
16 condition is and take those steps necessary to assure
17 compliance with quality assurance requirements as they
18 deem appropriate in terms of their overall decision
19 whether to proceed with the facility.
20 This proposed contention, like the other
21 contentions, again, doesn't challenge TVA's statement
22 good cause for seeking good cause for construction
23 permits and is outside the scope of this proceeding. It
24 lacks any adequate support, other than a sweeping
25 assertion that you cannot restore confidence in the

1 structure systems and components of the facility. There
2 is simply no basis for those suggestions and, therefore,
3 the contention should be rejected as not complying with
4 10 CFR, Section 2.309, (f(1 (iii, (vi), and (v). In
5 fact, this contention, as I said a moment ago, simply
6 misses the point.
7 TVA has already expressly recognized that
8 structures -- that there are structures that have been
9 substantially completed, that there are others that need
10 more activity, more inspection, to revalidate in terms
11 of compliance with NRC requirements, and those are the
12 efforts that it wishes to undertake under -- and is
13 preceding to undertake under the reinstated construction
14 permits.
15 The nuclear quality assurance program at
16 Bellefonte's units one and two has been reestablished
17 and is being implemented, and the NRC staff has
18 inspected that program and confirmed its adequacy and
19 has resumed appropriate inspection and oversight
20 activities to assure NRC requirements. They are
21 addressing the plants material condition to determine
22 what further may have to be restored or replaced as the
23 need arises.
24 The NRC reviewed that, conducted inspections,
25 and found it to be acceptable. That Chairman Jaczko and

1 Mr. Williams may have expressed differing views, while
2 not a common occurence, in a sense, this is not
3 extraordinary. The NRC has a long and well-established
4 process, as I think the staff earlier acknowledged,
5 encouraging staff members to express differing views or
6 non-concurring views, as the case may be, and it is
7 clear that the commission's internal processes recognize
8 the possibility that you will not have unanimity among
9 the commissioners in reaching their decisions.
10 But what is most significant in this regard is
11 the points raised by Mr. Williams and by the chairman in
12 their differing views on this matter, were fully and
13 completely addressed by the staff and by the commission
14 in resolving the matters that were before them for
15 decision.
16 In January 2010, petitioners filed a
17 supplemental basis for this contention in which they
18 provide documentation regarding the tendon coupling
19 failure and alleged QA deficiencies with respect to
20 that. Again, as with respect to proposed Contention 5,
21 the supplemental basis for proposed Contention 5, TVA
22 filed a motion to strike largely on the same grounds
23 that were identified for its earlier motion to strike.
24 At bottom, the approach that Petitioners would
25 have us take deprives other parties from an opportunity

1 to respond to the contentions, and all the bases as they
2 are represented, if they are simply able at will to file
3 additional bases and positions with respect to the
4 issues. Nevertheless, we did respond to the substance
5 of this proposed contention in our January 29th answer.
6 As noted there, fundamentally it's just an example of
7 the originally proposed contention without adding
8 anything new that is in itself material to the
9 proceeding.
10 In short, the contention lacks an adequate
11 basis. It's insufficiently pled and is vague, and for
12 that reason should be rejected.
13 I would also note, as the board has inquired
14 whether there are other appropriate avenues which could
15 be employed to get resolution of these issues, in fact,
16 there are two. Clearly to the extent petitioners have a
17 concern that their current ongoing quality assurance
18 issues that may affect public health and safety, the
19 avenue of 2.206 is a very viable approach.
20 Alternatively, these are matters that will be
21 addressed should TVA decide to pursue an application,
22 its application for operating licenses in connection
23 with the safety evaluation of the facility in that
24 regard. Assuming they are otherwise admissible, I would
25 expect they could propose a contention at that point.

1 That would be the right opportunity, the findings that
2 have to be made in that regard by the Commission before
3 issuing an operating license are just the kind of
4 findings to which these kind of issues -- issues have
5 bearing.
6 That completes my position, Mr. Chairman.
7 JUDGE BOLLWERK: All right. Judge Baratta,
8 any questions?
9 JUDGE BARATTA: In your prepared statement,
10 you made reference to completed structures or something
11 to that. Could you --
12 MR. CHANDLER: I think as noted by both TVA in
13 its request, its August request, and by the Staff in its
14 safety evaluation report, the construction permits here
15 having been issued in 1974 were used. The containment
16 structure is there in substantial part, cooling towers
17 are there. There are other structures also that are --
18 that exist.
19 JUDGE BARATTA: But, I understand that. You
20 seem to make a distinction between those of ones that
21 were not complete relative to QA that -- did I
22 understand you correctly?
23 MR. CHANDLER: No, I wasn't really trying to
24 draw a distinction over there. The point is, clearly,
25 the activities that were conducted in the past were

1 conducted under appropriate quality assurance
2 requirements.
3 JUDGE BARATTA: : And for how long were they
4 not under a QA program?
5 MR. CHANDLER: Full QA program, I think, it's
6 roughly in the neighborhood of three years since
7 withdrawal of the construction permits in September, I
8 believe it was, of 2006. I assume they probably stopped
9 somewhat before that point in time.
10 JUDGE BARATTA: : And could you briefly
11 describe the corrective action program that's referenced
12 in that letter I mentioned earlier?
13 MR. CHANDLER: I am not sure I can. If I can
14 have one moment. I think, Judge Baratta, the actual
15 activities subject to QA were terminated somewhere in
16 the November 2005 timeframe and probably were not
17 resumed until approximately the March 2009 timeframe.
18 The corrective action program, if you need a
19 description, I would have to provide that separately. I
20 think it's intended to be a corrective action program as
21 envisioned by Appendix B to the Commission's
22 regulations.
23 JUDGE BOLLWERK: : All right. Anything
24 further at this point? Judge Sager?
25 JUDGE SAGER: : No.

1 JUDGE BOLLWERK: : You made a statement that
2 the contention is outside the scope of the proceedings
3 because the argument is being made that the good cause
4 is defined by what was put forth by TVA goes to
5 questions about, for instance, the cost per kilowatt
6 hour, installed capacity, the decrease in suppliers, the
7 sorts of economic considerations you mentioned before.
8 And that, of course, is on page 5 of the original August
9 26, 2008 letter that TVA submitted to the staff
10 requesting the reinstatement of the construction permits
11 for Units one and two.
12 But I'm looking at page one of that letter and
13 the second paragraph, and it talks about as explained
14 below, of course, the question is what does the word
15 below mean. "Good cause exists to support TVA's
16 Bellefonte Plant was substantially complete, and prior
17 to withdrawal of the construction permits was being
18 maintained in a deferred construction status consistent
19 with NRC's definition for deferred plants" -- for
20 deferred nuclear plants as described in generic letter
21 87-15 in policy statement on deferred plants.
22 Reinstatement of the permits would allow TVA
23 to, one, return the units to deferred status and resume
24 preservation and maintenance activities as appropriate
25 under the deferred plan policy; And two, determine,

1 with a relative degree of certain difficulties and
2 whether operation of the units is a viable option. It
3 strikes me that what you have defined as the good cause
4 factor which you gave on page five of that letter goes
5 to the second point. But the first point is what the
6 Intervenors are really talking about, to return the
7 units to the deferred status.
8 Wasn't this really an underlying assumption if
9 you had come in and requested the plant simply be
10 reinstated without indicating that it could be brought
11 into a deferred status, would Staff have even considered
12 your request? If you cannot show you were ready for
13 deferred status would you have gotten your license
14 reinstated?
15 MR. CHANDLER: It's hard to speculate. Recall
16 the Commission, of course, first directed the
17 reinstatement be authorized as a terminated plant, which
18 is short of a deferred plant in terms of the activities
19 that are permitted. How the staff would have reacted if
20 the initial request had been cast in terms of that, I
21 can't speculate at this time.
22 JUDGE BOLLWERK: But to bring it back to a
23 terminated status would be bringing it back to where it
24 was, essentially.
25 MR. CHANDLER: I think -- let me see if I can

1 phrase it this way. Clearly they're activities that
2 TVA, too, have undertaken on its without, one, the
3 preemptors of the NRC and the authority of a
4 construction permit, activities not really subject to a
5 need for a construction permit. But TVA, as we have
6 explained repeatedly, has a larger charge in mind, that
7 is determining whether Units one and two present a
8 viable generating capacity option for their needs, and
9 for that reason, wish to take a very hard look at the
10 facility, the material condition of the facility, the
11 viability of the facility in many respects, to see how,
12 what more needs to be done to reestablish them, and
13 whether they should be pursued.
14 It's a phased approach, starting with a more
15 modest -- the request had been for deferred plant
16 status, and if that proves out, then perhaps going
17 forward with 120-day letter to resume more active
18 construction activities. What -- the benefit of the
19 reinstated CP is to, if you will, lend the credibility
20 of the NRC process and oversight, the requisite
21 competence of a quality assurance and overlay to the
22 activities that TVA is undertaking.
23 JUDGE BOLLWERK: But if this plant could not
24 be brought to deferred status, was it really even a
25 viable option?

1 MR. CHANDLER: I'm not sure I understand the
2 question.
3 JUDGE BOLLWERK: I guess it goes back to the
4 same point which is that absent some showing, some
5 indication by TVA that this plant could be brought to
6 deferred status, was there any viability to the plant?
7 MR. CHANDLER: The difficulty I am having to
8 answer is that really is the question TVA is asking
9 itself. TVA sought the Commission's reinstatement of
10 the construction permits to undertake these activities
11 to answer that question.
12 JUDGE BOLLWERK: We are in a loop, but is that
13 good cause for reinstating the facility?
14 MR. CHANDLER: Again --
15 JUDGE BOLLWERK: : Viability could be economic
16 but it also could be technical. If the plant has no
17 viable in technical matter, what is the good cause? And
18 I'm reading your letter; it says, one and two, that's my
19 question. One is technical, and two is economic.
20 MS. SUTTON: With the Board's permission, yes,
21 Your Honor, the paragraph you are referring to on page
22 1, when this was -- it might not be the paragon of
23 clarity right now, but the "good cause" as explained
24 below, the good cause as set forth on page 5 as you
25 demonstrate. And those factors are the good causes

1 necessary to get to the point of reinstatement. Once
2 you get to the point of reinstatement, as this clearly
3 says in this first paragraph, reinstatement of the
4 permit then allows TVA to, item number 1, return the
5 units to deferred status and resume preservation and
6 maintenance activities. So we're viewing it more in a
7 stepwise fashion, Your Honor as opposed to the item
8 number one being one of the elements of good cause.
9 JUDGE BOLLWERK: All right. Judge, Baratta,
10 anything?
11 JUDGE BARATTA: No.
12 JUDGE BOLLWERK: Judge Sager?
13 JUDGE SAGER: : Nothing here.
14 JUDGE BOLLWERK: I turn to the staff and if
15 you have anything to say about the questions I just
16 raised or that Judge Baratta raised, you're certainly
17 welcomed to do so.
18 MR. ROTH: : David Roth for the Staff. The
19 role of quality assurance and reinstatement request can
20 be best learned by reviewing what Commissioner Svinicki
21 wrote. On page 2 of her Commission Voting Record. She
22 described a reviewing process that the Commission told
23 the staff to go forward on which involves restoring the
24 plants to terminated status and then, subsequently,
25 based on inspection results, deciding whether the plant

1 could go forward with deferred.
2 So it really becomes academic to decide
3 whether good cause for deferred is the issue because the
4 Commission's voting record makes clear the Commission is
5 looking for a good cause proceeding relative to
6 reinstating the permits. And in this case, the
7 Commission has directed that's reinstated only to
8 terminated, so a deferred status is not part of the good
9 cause.
10 Second, there's really a lack of disagreements
11 on this contention. The Petitioners state that TVA did
12 not implement its quality assurance plan. The Staff is
13 aware TVA didn't do it and TVA itself has actually
14 reported this pursuant to 5055 (e) on May 14 of 2009,
15 after they reinstated the Quality Assurance Plan, they
16 provided as required by the regulations, their report of
17 the quality assurance breakdown along with the
18 corrective actions for that, thus, further demonstrating
19 that this is the issue of having the quality assurance
20 as not part of the termination. It's part of the after
21 the permits are reinstated, what actions are required
22 under those permits.
23 Third, Your Honors, it inquired about the
24 Quality Assurance Program. Since the time of the
25 reinstatement, TVA has reinstituted its corporate-wide

1 Quality Assurance Program, however, that was not part of
2 the good cause but the fact they were going to do this,
3 because they had the permit, they had to reinstitute the
4 Quality Assurance Program. Your Honors specifically
5 asked about the corrective actions or what they do with
6 significant corrective actions under that program. The
7 last version is dated January 15, 2010, for TVA's
8 corporate-wide Quality Assurance Program and,
9 specifically, in Section 10.2.2, one can find sections
10 regarding corrective action for adverse quality. The
11 Petitioners, again, have not referenced these documents.
12 Perhaps there is a new filing or the previous versions
13 of these to show why these corrective action programs
14 are somehow deficient or must be addressed pursuant to
15 good cause or in the good cause proceeding for the
16 construction proceedings reinstatements.
17 That's as far as quality assurance. It is
18 something that is appropriate for operating license
19 review. If there is a significant breakdown in quality
20 assurance alleged by the Petitioners or determined by
21 the Staff, perhaps the Commission will issue an Order on
22 its own. One could petition for 2.206 for such action.
23 The Staff through its reviews may in fact, deny an
24 operating license based on quality assurance problems.
25 But none of that is relevant to the reinstatement permit

1 and the good cause for reinstatement which rather than
2 demonstrating that there is currently an effective
3 corrective actions program as one might need for an
4 original construction permit proceeding, instead it's
5 reinstating the existing construction permit.
6 JUDGE BOLLWERK: The analogy was used that
7 this is like chain of custody. And once it's broken, it
8 really can't be fixed in any significant way. Do you
9 agree with that argument?
10 MR. ROTH: Certainly. I believe, as Your
11 Honors noted before and as our briefings have stated,
12 TVA proceeds at risk if they can't produce the adequate
13 documentation to satisfy the Staff and then whatever the
14 item is, can't be put in service.
15 JUDGE BOLLWERK: Do you want to say anything
16 about that? You're looking at me.
17 JUDGE BARATTA: I was waiting to hear what you
18 are going to say.
19 JUDGE BOLLWERK: Well, I think the
20 Petitioner's argument was basically, that once it's
21 broken, it's broken. What you're saying is once it is
22 broken, it is broken, but it can be fixed. I may be
23 putting words in your mouth, Mr. Dougherty. If I am, I
24 apologize.
25 MR. DOUGHERTY: No, no, I'm with you Judge.

1 MR. ROTH: The Petitioners may be entirely
2 correct. If something is broken, it could be
3 irretrievably fixed, but that fixing process, whether
4 it's broken or not, involves putting it in service for
5 the operating license, not for reinstatement of the
6 permit. And again, at the operating license stage,
7 Petitioners could certainly provide well-crafted
8 contention relative to quality assurance.
9
10 JUDGE BOLLWERK: We went over this before, but
11 there was a staff review process, but there was no
12 hearing notice that went out relative to the request for
13 return to deferred status.
14 MR. ROTH: That's correct, Your Honor.
15 JUDGE BOLLWERK: Judge Baratta, you have
16 anything?
17 JUDGE BARATTA: No.
18 JUDGE BOLLWERK: Judge Sager?
19 JUDGE SAGER: Yes, a question on deferred
20 status: It sounds like what we are saying is that once
21 a piece of equipment is not under QA, then it becomes
22 prejudiced in a sense that it has to be proven that it
23 can be brought back up to standard. Is there any
24 standard under the deferred status for a plant that all
25 equipment in that plant has to be, that can't contain

1 any equipment that has to be brought up to code yet?
2 MR. ROTH: If I'm understanding Your Honor's
3 question, it's if the Commission's policy on deferred
4 plants would somehow prohibit utility from saying,
5 here's some equipment, this equipment is quarantined
6 because we can't demonstrate its quality assurance. On
7 that affect, no, the policy contains no prohibition that
8 would somehow prevent a plant from saying we do not like
9 this equipment, we think it's broken and we don't
10 even -- therefore pursuant to our quality assurance
11 plan, this equipment will need additional review.
12 JUDGE SAGER: Okay, that was my question. One
13 other follow-on question is: Did I understand you
14 correctly to say that all of the equipment has been
15 reviewed and has passed review? I heard you say
16 something that the Staff had reviewed the status of the
17 terminated plant and approved it to go to deferred
18 status.
19 MR. ROTH: By that, there is no intention to
20 say that the plant has been reviewed by the Staff
21 everywhere. The Staff had performed inspections that
22 have verified to the Staff's satisfaction, that the
23 Quality Assurance Program has been re-implemented.
24 However, as we have stated, nobody disagrees that the
25 plant spent several years without a quality assurance

1 program. During that time, equipment may have degraded,
2 may have rusted, may have had halogen inappropriately
3 introduced to it. All that equipment, pursuant to
4 TVA's corrective actions program, will either have to be
5 addressed or quarantined by the plant. But at this
6 juncture, for the reinstatements, that doesn't go to
7 good cause.
8 JUDGE SAGER: Okay, thank you.
9 JUDGE BOLLWERK: Can you provide us with any
10 information about the CAP in terms of what it consists
11 of? Is it in the record anywhere in terms of the ADAMS?
12 MR. ROTH: The corrective actions program,
13 the corporate one, I could not give you an ML number at
14 the moment, but we can try to look that up later. The
15 latest submission. though, is dated January 15, 2010,
16 and the subject line is nuclear quality assurance
17 program, TVA-NQA-PLN89-A or TVA
18 November-Quebec-Alpha-Papa-Lima-November-89-Alpha. And
19 Also the other letter whereupon TVA announces their
20 breakdown in the quality assurance program, is dated Maa
21 14, 2009.
22 JUDGE BOLLWERK: To what degree does the NRC
23 Staff have an ongoing inspection program to look at --
24 you obviously went through, you did an inspection at the
25 time that the request came in, to return the plant to

1 deferred status. What do you do going forward?
2 MR. ROTH: Going forward, I can tell you what
3 was done historically. The Commission may choose to do
4 it differently in the future. Historically, at
5 Bellefonte, resident staff or regional staff from other
6 sites have gone and performed the NRC's quality
7 assurance inspection program for delayed plants. This
8 inspection, if I recall correctly, is a twice-a-year
9 inspection, though it might be just once a year. I need
10 to consult with tech staff to verify that for certain.
11 The results of the inspections are within ADAMS
12 inspection report and identified violations in the past.
13 Thus the NRC has an ongoing oversight program
14 for deferred plants, including Bellefonte. And just a
15 second, I can give you the specific inspection program
16 procedure for that, too.
17 JUDGE BOLLWERK: Given the Staff did an
18 inspection back in, let's see ... I can see it here, I
19 believe it was back in the fall, when would the next
20 inspection be, if you know?
21 MR. ROTH: I do not have this information.
22 The inspection procedure entitled Review of Quality
23 Assurance for Extended Construction Delay is inspection
24 procedure 92050.
25 JUDGE BOLLWERK: Anything further, Judge

1 Baratta?
2 JUDGE BARATTA: Not for the Staff, no.
3 JUDGE BOLLWERK: Something for TVA? This is
4 the time if you did.
5 JUDGE BARATTA: I will wait until rebuttal.
6 JUDGE BOLLWERK: Judge Sager, anything?
7 JUDGE SAGER: Nothing here.
8 JUDGE BOLLWERK: Mr. Dougherty?
9 MR. DOUGHERTY: Judge Baratta, if you have a
10 question, I think you should raise it now.
11 JUDGE BARATTA: Well, it sounds like what you
12 wanted was for TVA to confirm the status of the
13 equipment, and you were skeptical as to whether they
14 could confirm that it's satisfactory. It sounds like
15 they are going out trying to confirm whether or not the
16 status -- confirm the status of the equipment and
17 whether or not it is satisfactory. Is it a question of
18 the timing? Is that what the issue is?
19 MR. DOUGHERTY: No. I'd say it's a question
20 of the forum. We believe we have a right under Section
21 189 of the act to a hearing on genuine issues that are
22 material to the safety of this plant. They sent a
23 letter -- actually, this letter was sent almost two
24 years ago, a year and a half ago, so it proceeded any of
25 our contentions that we are aware of. We filed a

1 contention saying there are issues here. They have
2 claimed in this letter they have a corrective action
3 program and everything is fine; they will take care of
4 it.
5 But I think the question is, can they do that
6 informally with the Staff? Or do those questions get to
7 be ventilated in an adjudicatory proceeding like this
8 one? And what we're saying is we have a right as the
9 affected interested public to make sure that their
10 submissions are tested in the crucible of
11 cross-examination, going through our expert, and
12 ultimately being subject to your 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 layup program would be entered into
22 the Corrective Action Program." And then they add in
23 the next sentence that "Systems and components that may
24 have been affected in the course of cannibalization,"
25 which is what I call it, "would likewise be entered into

1 TVA's Corrective 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 as to whether they are putting the right
6 components into the CAP or not. And we would like to be
7 involved in testing the Staff's opinion, the statutory
8 safety standards that have been met.
9 Judge Bollwerk, you read all but the last
10 sentence of that second paragraph on page 1. And I
11 found the last sentence was important, I think. What
12 TVA has said and this was, again, August of a year and a
13 half ago, "If and when the construction permits are
14 reinstated, then TVA would, among other things, seek to
15 establish the regulatory framework and licensing basis
16 upon which the units could be completed."
17 Now, I think what they are saying we don't
18 really know what licensing proceeding lies ahead. This
19 is, as I said before, this is sort of uncharted waters
20 in licensing nuclear power plants. They seem to be
21 saying simply getting the CP reinstated does not give
22 them the status they want or need to resume
23 construction. In fact, we need to establish the
24 framework and licensing basis upon which they can get
25 that authorization.

1 And we are saying the same thing. We are
2 saying we need an adjudicatory process to answer the
3 existing unresolved questions like what happened to the
4 all those systems and components. Again, this is the
5 other contention in which we submitted what we thought
6 was a supplemental basis. According to the staff and
7 TVA, we didn't do so properly and there should be a
8 cover motion asking for leave to do that. And if that
9 is what the panel desires, we will certainly do that.
10 It is my understanding that there's an
11 unwritten, perhaps even a written rule, in the NRC
12 procedures that when a party is represented pro se, that
13 they are cut a little slack in some of the procedural
14 niceties. And I think that is the category in which
15 this falls. Maybe we did not understand in the cover
16 motion, but that was the intent, to submit this as
17 something that should be part of the record and,
18 obviously, to the extent the other parties oppose. And
19 we replied to their opposition. Again, we were not
20 trying to there must be a way to get this on the record;
21 we were not pulling a fast one.
22 And that concludes my rebuttal. Thank you.
23 JUDGE BOLLWERK: Judge Baratta?
24 JUDGE BARATTA: No.
25 JUDGE BOLLWERK: I take it the answer that

1 staff provided by reading the portion of Commissioner
2 Svinicki's statement basically answered the question
3 that I posed, that if TVA said nothing of questioned
4 status, the agency or the Staff would have been willing
5 to give them a license. It simply got them back up to
6 status where they, the plant had been terminated.
7 MR. ROTH: That appears to be what
8 Commissioner Svinicki said, yes.
9 JUDGE BOLLWERK: Judge Sager?
10 JUDGE SAGER: Not at this time.
11 JUDGE BOLLWERK: Nothing further on this one?
12 Okay. Let's then go to Contention 7, which is the
13 Bellefonte Units 1 and 2 cannot satisfy NRC safety,
14 environmental and other requirements that have been
15 imposed or upgraded since 1974. Mr. Dougherty?
16 MR. DOUGHERTY: We consider Contention 7 to be
17 a common sense contention that's ultimately grounded in
18 the dissenting opinion from NRC's staff, Staffer
19 Williams. He said that since the CPs were issued to
20 this facility, the regulatory requirements have changed
21 and have been upgraded, and particular he cites -- not
22 only did he cite changed standards regarding flooding,
23 but that the staff is now of the opinion, according to
24 him, and as I recall his statement is not in his
25 opinion, but, rather, in the staff's opinion, the

1 determinations were made back in 1974 about site
2 suitability including flooding risk, were made
3 erroneously and that because now what purports to be --
4 pretends to be higher water levels, the judgments need
5 to be made again. So, this is really just an attempt to
6 embodie that concern in the form of a contention.
7 That's all I have on that.
8 JUDGE BOLLWERK: The question I have -- the
9 deferred plant status policy sort of anticipates that
10 there will be instances where plants are put in deferral
11 and then things are changed and they have to address
12 those as part of the deferral process. Does that --
13 MR. DOUGHERTY: Well, we think this is
14 different. We think that where a plant has a permit
15 withdrawn or terminated and then it sits dark and cold
16 for some period of years, that the deferral process
17 doesn't apply. Now, in this case, evidently, it was
18 dark and cold and outside the QA process for
19 approximately 3-1/2 years. But it could have been 15
20 years. The TVA has offered no bright line when added
21 requirements come into place. What he said is when you
22 get out of the process, then, to get back in you should
23 be expected to comply with the contemporary licensing
24 requirements.
25 Now, and we would not make this contention if

1 the plant had stayed and remained in deferred status for
2 the entire period when it was not being built.
3 JUDGE BOLLWERK: So basically having lost
4 their -- having withdrawn it and they fell outside the
5 parameters and now they need to get back within the
6 parameters, they have to go back and comply?
7 MR. DOUGHERTY: Well, we haven't said all.
8 What he said is we say flooding. There is evidence that
9 the original determination was erroneous and that is
10 what we said needs to be reviewed, not everything.
11 Although that argument could be made, we just have not
12 made it.
13 JUDGE BOLLWERK: All right.
14 JUDGE BARATTA: Nothing.
15 JUDGE BOLLWERK: Judge Sager?
16 JUDGE SAGER: Nothing for me.
17 JUDGE BOLLWERK: Then we'll turn to TVA.
18 MS. SUTTON: Like its predecessors, proposed
19 Contention 7 is inadmissible. It essentially alleges
20 because of new data and purported past errors and
21 completely new environmental impact assessment and a
22 safety review must be conducted prior to the issuance of
23 a new reinstated construction permit at Bellefonte. And
24 this fundamental concern that Mr. Dougherty just voiced
25 is fully addressed by the processes I'll explain to you.

1 As a result, this proposed contention falls
2 outside the scope of this proceeding because it seeks to
3 revisit plant siting sighting issues related to the
4 initial granting of the CP and to challenge TVA's
5 ability to comply with new NRC requirements that may
6 have arisen since issuance of those permits. I must
7 repeat myself here that this is a good cause proceeding
8 on TVA's reinstatement request and is not a vehicle for
9 reevaluating the Staff's original environmental and
10 safety reviews of TVA's initial CP application.
11 For that reason, these issues are not
12 ligitable here pursuant to Section 10 CFR 2.309
13 (f)(1)(iii). So you ask, where are such issues best
14 addressed? Through either the 2.206 process or in a
15 future operating license proceeding. This answer goes
16 directly to the questions again posed by the Board in
17 its February 18 Memorandum and Order, and let me explain
18 here.
19 First, to the extent Petitioners believe there
20 are health and safety issues currently warranting
21 Commission action, the appropriate recourse is to
22 request a file pursuant to Section 2.206. Second, the
23 Commission recently noted again in CLT-10-06, should TVA
24 apply for an operating license, there will be a future
25 hearing opportunity on that application. Under Parts 2

1 and 50, interested persons would have the opportunity to
2 raise contentions in an OL proceeding. In this regard,
3 with respect to safety issues, it's important to recall
4 that a CP constitutes only an authorization to proceed
5 with construction and does not constitute the
6 Commission's approval of the safety of any design
7 feature.
8 The NRC will not issue a license authorizing
9 operation of the facility until it has found that the
10 final design provides reasonable assurance that the
11 health and safety of the public will not be endangered
12 by its operation, in accordance with future operating
13 license and NRC regulations. Thus, any issues affecting
14 or related to safe operation of the units, including any
15 potential new data regarding site geology, seismology,
16 meteorology, or hydrology as alleged in proposed
17 Contention 7 would be addressed before OL issuance.
18 Such issues are not cognizable in this
19 proceeding on the limited question of whether there is
20 good cause for reinstatement of the CPs. From an
21 environmental perspective, reinstatement of the CPs in
22 terminated or deferred status does not authorize any
23 work that is not already permitted by the original CPs.
24 The environmental impacts of building Units 1 and 2
25 which already have largely occurred, were considered by

1 the NRC in its original FES for the Bellefonte Unit 1
2 and 2 CP application.
3 If TVA decides to resume the OL review
4 process, then any necessary revisions to its
5 environmental review documents to support eventual plant
6 operation would be made at that time. We discussed this
7 at length this morning.
8 Finally, I turn to Petitioner's claims of new
9 data and developments, including new NRC requirements.
10 These, likewise, fail to establish the existence of a
11 genuine material dispute fit for adjudication in this
12 good cause proceeding. If TVA ultimately seeks to
13 reactivate construction of Bellefonte, it would then be
14 required to address section 3-A of the Commission's
15 deferred plant policy statement, which specifically
16 calls for consideration of new regulatory requirements.
17 Namely, TVA would be required to address new regulations
18 to the extent applicable to Units 1 and 2 or seek an
19 exemption if it decides to resume construction on one or
20 both units.
21 Section 3-A-6 of the deferred plant policy
22 statement calls for TVA to notify the NRC in writing at
23 least 120 days before plant construction is expected to
24 resume. Among other things, this 120-day letter that we
25 referred to here in the discussions must identify any

1 new regulatory requirements applicable to the plant that
2 have become effective since plant construction was
3 deferred, together with a description of the licensees'
4 proposed plans, for compliance with these requirements
5 or a commitment to submit such plans by a specified
6 date.
7 This and other information, such as security
8 and other required plans, operating procedures,
9 technical specifications and the facilities design would
10 be evaluated during the review of the OL application.
11 At the present time, however, the issues raised by
12 Petitioners in proposed Contention 7 are outside the
13 scope of this proceeding and must be rejected. That
14 completes my remarks.
15 JUDGE BARATTA: Relative to the -- let's say
16 they do -- we find that there was good cause to move
17 forward and get to the point where TVA wants to come in
18 for an operating license. What new information would
19 you have to provide at that point in order to amend your
20 existing operating license application so as to be
21 consistent with the flooding issues?
22 MS. SUTTON: Yes, Your Honor. TVA is doing a
23 review of the FSAR essentially on a line-by-line basis
24 and if there is new information that would have to be
25 updated as part of the FSAR review, they would do so.

1 In addition, as I have explained, they are doing a
2 review under the deferred plant policy statement of any
3 new regulatory requirements that would require further
4 amendment to the OL application. Again, I would expect
5 such information may be incorporated into the FSAR.
6 JUDGE BOLLWERK: Anything further?
7 JUDGE BARATTA: Not at this time.
8 JUDGE BOLLWERK: Judge Sager?
9 JUDGE SAGER: No questions for me.
10 JUDGE BOLLWERK: I think the point, if I
11 understand what Joint Petitioners are making is that
12 this problem is solvable by the process in the deferred
13 plant policy statement, but the deferred plant policy
14 statement didn't apply here because this wants a
15 deferred plant? It's sort of a bootstrap argument.
16 MS. SUTTON: But the deferred plant policy
17 statement will apply if TVA decides to potentially
18 proceed with construction. They will have to file a
19 120-day letter, do the necessary analyses and move
20 forward on that front.
21 JUDGE BOLLWERK: That's true, but this
22 wasn't -- again, back to the same point, this wasn't a
23 deferred plant, but a reinstated plant. So how can you
24 justify the policy based on this plant?
25 MS. SUTTON: That is true, but it is

1 reinstated into deferred status, and it is fully
2 anticipated TVA will have to comply with that policy.
3 JUDGE BOLLWERK: But this isn't a deferred
4 plant policy statement or deferred plant proceeding. In
5 fact, there wasn't such a proceeding. The only one they
6 had to come to was the reinstatement proceeding.
7 MS. SUTTON: That's correct Your Honor but the
8 results of that analysis conducted as part of the
9 deferred plant policy statement, should TVA decide to
10 move forward in an operating license context, would be
11 subject to a notice of opportunity for hearing.
12 JUDGE BOLLWERK: Say that again?
13 MS. SUTTON: NCLA1006, the NRC has indicated,
14 and I will look for the site again, that should TVA
15 apply for an operating license, there will be a future
16 hearing opportunity on that application, and they will
17 have the opportunity to raise these sort of issues as
18 part of that proceeding. It's just not ripe for review
19 in the context of this very narrow reinstatement
20 proceeding.
21 JUDGE BARATTA: We just heard that you already
22 have an application for operating license, though.
23 MS. SUTTON: That is correct.
24 JUDGE BARATTA: So you will not be applying
25 for an operating license, will you?

1 MS. SUTTON: We don't believe we need to
2 apply, but I don't know that decision has been made
3 finally.
4 JUDGE BARATTA: Therefore, that statement is
5 not valid.
6 MS. SUTTON: No, that is a statement of the
7 commission, Your Honor. Should TVA apply for an
8 operating license, there will be a future hearing
9 opportunity on that application. Now, as you also know
10 in the case of Watts Bar, there is a similar opportunity
11 for hearing that case. So I think that there is
12 Commission precedent that there will be an opportunity
13 for the public to participate in the operating license
14 proceeding.
15 JUDGE BARATTA: There is no doubt in my mind
16 that you're going to have to come up with an amendment
17 to incorporate the TMI, and explain how you do that.
18 MS. SUTTON: : Correct. Correct.
19 JUDGE BOLLWERK: Whether you supplement the
20 existing application or whether you file a new one,
21 there will be a hearing, or hearing opportunity.
22 MS. SUTTON: One would expect there would be a
23 re-notice.
24 JUDGE BOLLWERK: All right, anything further?
25 Judge Sager?

1 JUDGE SAGER: Nothing for me.
2 JUDGE BOLLWERK: All right, let's turn to the
3 NRC staff.
4 MS. JONES: Andrea Jones for NRC staff. I
5 think counsel for TVA did a pretty thorough job of
6 explaining, and explaining what I was going to explain
7 and that is that we don't believe the Contention 7 is
8 admissible. It raises issues that presumes that we
9 should go back to the initial construction permit
10 review stage and that's just not where we are.
11 Issues related to Part 100, those are issues
12 that would be required as part of 50.55 as part of TVA's
13 final safety analysis report as part of the operating
14 license application review stage. And should TVA decide
15 that they want to proceed to that stage, then they would
16 be required to address that information at that point in
17 time. But we don't believe that this is the appropriate
18 time to have those issues raised, and it was not part of
19 the decision for reinstatement.
20 JUDGE BOLLWERK: Do you think maybe the agency
21 ought to have a reinstated plant policy?
22 MS. JONES: I don't pretend to -- I'm not
23 going to elaborate on agency policy. I think it would
24 be inappropriate for me to do.
25 JUDGE BOLLWERK: You can understand the

1 Petitioner's frustration, this is not a deferred plant
2 and it was a request to reinstate, not defer it.
3 MS. JONES: Right, it was to re-instated to
4 terminated status.
5 JUDGE BOLLWERK: But it was not deferred. And
6 that's the policy being -- I'm being told will be the
7 one that controls whether they have to meet the -- they
8 can go back, how, exactly, they have to address any
9 upgraded requirements.
10 MS. JONES: Any upgraded requirements, if they
11 advise us that they intend to resume construction and it
12 is part of the policy and I believe that it was made
13 part of the order when we initially issued the Order for
14 reinstatement they would be required to advise us of
15 what requirements would apply to their facilities and
16 how they intend to comply and, of course, we would
17 review that information at that time.
18 JUDGE BARATTA: And that would be handled by
19 by application for amendment to license?
20 MS. JONES: No, it would not be an application
21 for an amendment to the license.
22 JUDGE BARATTA: Their operating license, that
23 is?
24 MS. JONES: There currently is not an
25 operating license.

1 JUDGE BARATTA: They have an existing
2 operating license application?
3 MS. JONES: Yes, and we consider that to be
4 inactive. We are currently not reviewing their
5 operating license. We only looked at the request for
6 reinstatement. So our review was very limited.
7 JUDGE BARATTA: What are the steps that would
8 be required for that to become active?
9 MS. JONES: TVA would certainly have to let us
10 know if that's what they intend to do. Then we would
11 expect that they would send us a letter advising us of
12 what approach they intend to take and that would likely
13 reactivate the process. But it would be purely based on
14 what TVA advises us.
15 JUDGE BARATTA: You already heard they feel
16 they have to amend that license to incorporate the post
17 PMI requirements that are in the regulations.
18 MS. JONES: Certainly, they have to amend the
19 application. And we would expect that.
20 JUDGE BOLLWERK: At that time, are there any
21 regulations that would require them to update the SAR or
22 their environmental report to incorporate new
23 information with regard to seismicity and flooding?
24 MS. JONES: There is a general regulation
25 50.55(d) that requires them to update their FSAR as far

1 as the safety side is concerned. And there is as far
2 as the environmental information is concerned, there is
3 51.95(b) that also requires them to update information
4 related to the original final environmental statement.
5 But that's only based on new and significant
6 information. If there is new and significant
7 information at that time, then they would be required to
8 update it at that point.
9 JUDGE BARATTA: Now, when they come in for
10 this update or amendment to their existing or inactive
11 operating license application, would the notice hearing
12 opportunity on that amendment be strictly limited to the
13 information of that amendment?
14 MS. JONES: I can't really say at this point.
15 My presumption would be that the license application
16 likely in its entirety would be put up for notice for
17 opportunity for hearing. But I can't say with any
18 certainly since we're not at that point yet, but I would
19 presume it to be.
20 JUDGE BARATTA: For historical reference, what
21 was done?
22 JUDGE BOLLWERK: And if TVA would like to tell
23 us what they did in Watts Bar in terms of did you amend
24 it or put something new? You can probably find out the
25 answer to that.

1 MR. DOUGHERTY: Mr. Chairman, if Attorney Roth
2 would like to address the Board, we have no objection.
3 MS. JONES: Actually, I think I can go ahead
4 and address that. As I understand it, in the Watts Bar
5 case, it was left pretty much open. Everything was fair
6 game in that case. And as far as I know, there's
7 nothing in the provisions for notice for opportunity for
8 hearing that would limit that.
9 JUDGE BOLLWERK: Do you know, did TVA amend
10 their application in that instance or did they submit a
11 new application?
12 MS. SUTTON: Your Honor, I have been told it
13 was amended.
14
15 JUDGE BOLLWERK: All right. Judge Sager, do
16 you have anything?
17
18 JUDGE SAGER: Nothing here.
19
20 JUDGE BOLLWERK: Anything further you want to
21 add?
22
23 MS. JONES: We're good.
24
25 JUDGE BOLLWERK: Let's go back to

1 Mr. Dougherty then.
2 MR. DOUGHERTY: Well, by now there is a
3 evident pattern that emerged and the TVA and staff,
4 opposition to our contentions. First, for contention is
5 admissible because everything is outside the scope of
6 the good cause standard, even though the contentions
7 deal with economic feasibility of the power to be
8 produced at the plant. And secondly, every contention
9 is filed either too late or too soon. Some are too late
10 because they should have been raised back in the 1970s
11 when the CPs were initially issued, and the rest are
12 offered too early and they should be addressed as part
13 of the OL proceeding.
14 We don't know in advance which way it will be
15 challenged. We would have guessed our contention
16 regarding the site suitability and flooding would not be
17 characterized as too late because it was something that
18 was addressed in 1974, but instead TVA contends it is
19 here too early and these things should be evaluated in
20 the operating license stage.
21 Now, as a general principle, we agree that
22 certain types of safety issues are properly deferred to
23 the OL stage. Now, the kinds of issues that strike me
24 as appropriate for that would be something like
25 emergency evacuation. If there is a problem with

1 getting away people away from the plant, that the OL
2 proceeding is the right place to do that. If there is a
3 environmental problem, say a thermal discharge, to be
4 addressed in the operating license through a power
5 limitation that strikes me as appropriate.
6 But here we have the situation where the plant
7 may be unsuitable, a site unsuitable because of the risk
8 of flooding. And if that's the case, it seems obvious
9 to us the time to address that is now. And that's what
10 NRC staff member Williams said, there is evidence that
11 the decisions were not only -- were, in fact, wrongly
12 addressed 30 years ago and there is new evidence about
13 this. And if some kind of response is necessary, it
14 will be either be to declare the site unsuitable and
15 abandon it or construct it in a way that it is flood
16 proof, maybe it needs flood walls. I have no idea what
17 the answer would be , but it seems to involve
18 construction, not operations.
19 And if that's the case, the time for this
20 panel to consider it is now, while we are considering
21 construction permit reinstatement. That concludes our
22 rebuttal.
23 JUDGE BOLLWERK: Judge Baratta?
24 JUDGE BARATTA: We have heard at the operating
25 license stage that they will have to provide any impact

1 of any new and significant information. And it sounds
2 like there may very well be some new and significant
3 information with the flooding, and we have also heard
4 that according to the deferred plant policy, et cetera,
5 as you move forward, they have to identify the impact of
6 that information on their design. So would not that
7 take care of what you are concerned with?
8 In other words, if they come in and say, okay,
9 we do have new and significant flood information and
10 therefore the site's not as good as we thought it was,
11 we have to do something, doesn't that address it?
12 MR. DOUGHERTY: Well, If that something is
13 don't build it here, then there is nothing you can do
14 about that at the OL stage, well, that is a decision
15 that has to be made.
16 JUDGE BARATTA: Operate and tear down and
17 redress.
18 MR. DOUGHERTY: Is that the function of the
19 Commission or this panel, is to let all the issues
20 rollover to the OL proceeding after spending perhaps 10
21 billion dollars, to say, sorry, can't operate. I think
22 not. I think under Section 189 and under Part 50, I
23 think the task is to ask the questions and come up with
24 tested answers and make sure the site is suitable, make
25 sure the flooding isn't that much of a problem. That is

1 all I can say.
2 It just makes no sense to me to just roll it
3 over for five years and then say, sorry, bad site, you
4 can't operate. And as I pointed out, the probable or at
5 least one possible response to the flooding is a design
6 feature. Why raise those issues at the operating
7 license stage that might require some rebuilding. Do it
8 now while they evaluate the SSCs and while
9 reconstruction in some material way is still a
10 possibility.
11 JUDGE BOLLWERK: Do any -- either of the Staff
12 or the Applicant, want to respond to that point? There
13 will be an opportunity to respond.
14 MS. SUTTON: Your Honor, I would just like to
15 add that the Part 50 process here is a two-step
16 licensing process and to the extent the Petitioners
17 don't agree with that process, which is obvious, you
18 don't like the process, perhaps the best route is to do
19 a petition for rulemaking to change the rules.
20 JUDGE BOLLWERK: Anything from the staff?
21 MS. JONES: I think enough said.
22 MR. DOUGHERTY: With all due respect, we have
23 not criticized the process, we love the process. We are
24 not going to petition to change. Our point is under two
25 steps, construction issues are raised in step one and

1 operating issues raised in step two, and you consider
2 the issues we raise to be construction issues. And
3 that's our point, not that the process is flawed.
4 JUDGE BOLLWERK: Well, although a reason they
5 came up with Part 52 is because a lot of people were not
6 happy with the process.
7 MR. DOUGHERTY: But that is not a reality.
8 JUDGE BOLLWERK: Anything further? Judge
9 Baratta? Judge Sager?
10 JUDGE SAGER: Nothing for me.
11 JUDGE BOLLWERK: All right, and let's move on
12 to Contention 8, Bellefonte Units one and two do not
13 meet operating life requirements.
14 MR. DOUGHERTY: Section 50.49(e (5) says in
15 short that equipment installed has to be tested in a
16 fashion that assures it will remain operational until
17 the end of useful life, and I will read from 50.49(e(5),
18 aging equipment qualified by test must be reexamined by
19 natural or artificial accelerated aging to the installed
20 life condition. Now, when the tests were run and
21 satisfied at the time when the CPs were issued in 1974,
22 they were assuming this plant had a certain useful life.
23 And, frankly, I should know what it is, but I don't. It
24 was either 30 or 40 years. So they had to make sure
25 everything would hold up for 40 years. That was 36

1 years ago. We are now looking at a series of licensing
2 proceedings.
3 I have been told that they are looking at
4 turning the plant goes on, loading fuel and resuming
5 commencing operation in about 10 years. That will be 46
6 years from official CP issuance. And then if they
7 operate for another 40, we are talking 96 years. So, we
8 believe a consequence of TVA brought on itself by
9 delaying this construction process so long and now
10 trying to resume it is that they can't show the SSCs
11 will operate effectively over that period of time. So
12 what we are saying is the burden should be on TVA to
13 prove that the equipment will operate as required by
14 50.4095 to the end of its installed life. That
15 concludes my opening remarks.
16 JUDGE BOLLWERK: Judge Baratta, any questions?
17 JUDGE BARATTA: Nothing here.
18 JUDGE BOLLWERK: Judge Sager?
19 JUDGE SAGER: Nothing here.
20 JUDGE BOLLWERK: Let's turn to TVA.
21 MS. SUTTON: In proposed Contention 8,
22 Petitioners repeat the claim that TVA must conduct a new
23 safety analysis prior to the issuance or reinstate of
24 construction Bellefonte Units 1 and 2, but here alleges
25 that TVA has not provided critical research and

1 information on its aging equipment, or aging management
2 plan to deal with reliability and safety issues of
3 advanced age and end of installed life SCCs.
4 In support, as you just heard, petitioners
5 site 10 CFR 50.49 concerning the environmental
6 qualification of safety-related electrical equipment.
7 Proposed Contention 8 further evidences petitioners
8 recurring failure to abide by the clear terms of the
9 March 2009 Order. The subject of this proposed
10 contention, the purported advanced age end of installed
11 life SSCs has no nexus to TVA's good cause
12 justification for reinstatement of the CPs, and
13 accordingly, the contention must, yet again, be
14 rejected as falling outside the scope of this proceeding
15 pursuant to 10 CFR (f(1)(iii).
16 In addition, the concern raised by Petitioners
17 is unquestionably a post construction safety issue, not
18 subject to NRC review and findings in this CP
19 reinstatement proceeding. As the safety evaluation
20 makes clear, the NRC staff will review the detailed
21 design information and resolution of any safety issues
22 during the OL application review process, and if and
23 when TVA moves forward with an operating license
24 application.
25 Proposed Contention 8 thus fails to raise

1 material issue or establish a genuine material dispute
2 contrary to section 2.309 (f(1(vi). This is another
3 issue which may be more appropriate for consideration in
4 a Part 50 operating license proceeding, again, assuming
5 that any such future proposed contention fully meets the
6 admissibility requirements of Section 2.309. Issues
7 concerning the age or as found conditions of SSCs at
8 Units 1 and 2 while not litigable would to the extent
9 necessary and appropriate be evaluated by TVA and NRC
10 through applicable regulatory and licensing processes
11 upon any reactivation of construction.
12 For example, TVA's nuclear quality assurance
13 program or the NQAP which we talked about earlier,
14 addresses the issue equipment age. The NQAP makes clear
15 TVA controls prohibit deferred equipment, including
16 aged, degraded or outdated or obsolete equipment from
17 being used in nuclear safety related applications
18 without further evaluation and having been fully
19 restored or replaced.
20 Again, the adequacy of the NQAP is not
21 cognizable here. It could be the subject of either a
22 2.206 petition or possibly an issue in the future OL
23 proceeding. In addition, Section 3-A-7 of the deferred
24 plant policy statement describes the principle criteria
25 or bases upon which the NRC staff evaluates

1 acceptability of equipment upon reactivation of a plant
2 from deferred status. These include, for example,
3 reviews of the approved preservation and maintenance
4 programs as implemented to determine whether any SSCs
5 require special NRC attention during reactivation.
6 Finally, in accordance with 10 CFR Part 50
7 and/or licensing basis commitments in the preliminary or
8 final safety analysis report, the PSAR or the FSAR, TVA
9 would need to comply with the design requirements
10 specified in NRC approved industry codes and standards,
11 including those governing environmental qualification of
12 electrical equipment important to safety. As noted in
13 COM SECKY 08004 is, which includes TVA's submittal of
14 this system for restoration of plans and equipment
15 affected by the suspension of preservation and
16 maintenance activities.
17 As a result, if TVA decides to move forward in
18 an OL proceeding, then as-built condition of the plants
19 would be subject to NRC inspection for compliance with
20 licensing basis requirement. The foregoing
21 considerations underscore petitioner's failure to raise
22 a genuine dispute on material issue of law or fact in
23 the context of this current reinstatement proceeding.
24 Issues related to the aging of previously installed
25 plant equipment are not material to the NRC's finding of

1 good cause for reinstatement. Moreover, such issues
2 would be the subject of future NRC technical reviews
3 that are contingent upon TVA's as yet unmade decision to
4 reactivate construction and seek NRC operating licenses
5 for both Units one and two.
6 As such, they also would be more appropriate
7 for consideration either through the 2.206 proceeding or
8 again, through the Part 50 OL proceeding. For all of
9 the reasons, this proposed contention should be
10 rejected, Your Honors.
11 JUDGE BOLLWERK: : All right. Judge Baratta?
12 JUDGE BARATTA: : Nothing.
13 JUDGE BOLLWERK: : Judge Sager?
14 JUDGE SAGER: : Nothing here.
15 JUDGE BOLLWERK: The response here is the same
16 as the one before which is this just not the right time.
17 MS. SUTTON: : That is correct, for all of the
18 reasons stated.
19 JUDGE BOLLWERK: And now let's turn to the
20 Staff.
21 MS. JONES: Our response is the same as
22 before. We don't think, and with a couple of
23 deviations, 50.49(e(5) applies more to operators and
24 applies to applicants for operating licenses. But we
25 would also add that, and I think my colleagues mentioned

1 this earlier, is that any equipment that's determined to
2 be unsatisfactory or that's expired would be placed into
3 a CAP. And any issues regarding aging, in the context
4 in which petitioners are bringing it up, that is
5 something that we would look at as part of our review of
6 their final design which would be submitted in the final
7 safety analysis report.
8 So we consider any issues regarding the faulty
9 equipment or outdated equipment to be part of our
10 technical review at that point in time if TVA decides to
11 pursue an operating license application.
12 JUDGE BOLLWERK: : Is part of the plant
13 design, maybe I should -- Judge Baratta asked this type
14 of question, but does the design of the facility provide
15 a 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 you
19 may not know how old some of it is?
20 MS. JONES: Well, 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 that.
24 And we would pursue our normal process of inspecting g
25 and reviewing information submitted to us at the

1 operating license application stage.
2 JUDGE BOLLWERK: : Does a plant like this put
3 you on a heightened concern about the age of equipment?
4 MS. JONES: I can't necessarily speak to that.
5 It would be too much of an opinion. I don't want to
6 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 old or more?
10 MS. SUTTON: : We have records regarding
11 equipment age. 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 piping,
19 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
24 Sager? Judge Baratta?
25 JUDGE SAGER: : No.

1 JUDGE BOLLWERK: All right. Let me turn,
2 then, to the Petitioners. 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 any such issues at this stage. But there are
9 other 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. There's
12 been a lot of different information on flooding on this
13 site. The rebar is rusting. Now, at some point TVA had
14 to 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 in some
24 fashion, now is the time to do it, not the operating
25 license stage.

1 So, we would say with respect to the issues
2 that we've raised, it is the CP stage that is
3 appropriate, not the OL stage. Thank you.
4 JUDGE BOLLWERK: Anything?
5 JUDGE BARATTA: No.
6 JUDGE BOLLWERK: : Judge Sager?
7 JUDGE SAGER: : Nothing.
8 JUDGE BOLLWERK: : Then let's go ahead and
9 move on to the final contention, Number 9, impacts on
10 aquatic sources, including fish and mussels of the
11 Tennessee River.
12 MR. DOUGHERTY: Thank you, Your Honor. Over
13 time, environmental conditions change over time, and
14 since the construction permits were issued in 1974,
15 environmental conditions have changed. I'm sure
16 population patterns around the plant have changed. One
17 can make a lot of arguments about new analyses that need
18 to be conducted in order to account for a changed
19 circumstance around the plant. We are not making those
20 contentions.
21 The contention we're advancing here is that
22 scientific evidence that's collected by our expert
23 witness, Shawn Young, shows that since the initial
24 ecological reviews in the Tennessee River were conducted
25 40 years ago, ecological conditions have changed

1 substantially. The populations of many of the
2 indigenous species of fish and shellfish have shown
3 dramatic declines. This may be due in part to client
4 climate change, but things are changing out there. In
5 addition, there are a number of operations who affect
6 the water flow and this has to do with how the plant is
7 operated in terms of the use of water.
8 So, with Dr. Young's declaration and the
9 authorities he cites there, we would like to make TVA
10 demonstrate that the site is compatible and will not
11 lead to undue harm to the aquatic ecosystems in the
12 river. And we trust that Mr. Young's input into this
13 proceeding will educate the panel in a way it can make a
14 finding on this contention. That concludes my
15 presentation. Thank you.
16 JUDGE BOLLWERK: All right. Judge Baratta?
17 JUDGE BARATTA: Nothing.
18 JUDGE BOLLWERK: Judge Sager?
19 JUDGE SAGER: Nothing here.
20 JUDGE BOLLWERK: I spent about a week with Dr.
21 Young in March of last year so I know he has a lot to
22 say about matters of aquatics.
23 MR. DOUGHERTY: Most of it, I don't
24 understand.
25 JUDGE BOLLWERK: Hopefully, we issued an

1 opinion that dealt with it. Let me turn to TVA.
2 MR. CHANDLER: Thank you, Mr. Chairman. I'm
3 not sure I fully understand Mr. Dougherty's argument.
4 He starts by suggesting that he is not urging here that
5 there have been any changes that need to be considered
6 now, but his expert says there are changes that need to
7 be considered now. In fact, contrary to what was
8 suggested earlier, we have suggested that in a way these
9 contentions are too late, and we're contending at the
10 same time, perhaps they are, too early.
11 There was extensive consideration of the
12 environmental impacts of the proposed construction of
13 Bellefonte Units 1 and 2 some years ago. This is simply
14 not the occasion in the context of a construction permit
15 reinstatement proceeding, to revisit those. As was
16 noted earlier, an occasion to deal with these kinds of
17 issues will present itself in the event TVA goes forward
18 with its operating license application in that context
19 should an admissible contention be proposed at that
20 time.
21 Proposed Contention 9 essentially consists of
22 five subparts. The first, at least nominally, suggests
23 that it has to do with the reinstatement of the
24 construction permits and resumption of construction, but
25 notably as an operation of Units 1 and 2 on aquatic

1 resources. It suggests no data was provided in support
2 of the rationale for a finding of no significant impact.
3 Petitioner notes, though, that the majority of
4 construction activities have already occurred and the
5 impacts have been assessed and documented in the
6 original FES. Excuse me. That statement was made by
7 the Staff and it's environmentalist, not by
8 Petitioners. And that statement can be referred in 74
9 Fed Reg at 9308 and 9309 which was published on March
10 3rd.
11 Proposed Contention 9-B goes on to suggest
12 that the analysis for units 3 and 4 - and not related to
13 units 1 and 2 does not adequately address potential
14 impacts on operating 2 or 4 additional nuclear reactor
15 units on fish and mussels throughout the Tennessee
16 River, basin and 9-C suggests the analysis does not
17 adequately address the impacts to increase water intake
18 and increased thermal discharge on fish and mussels in
19 the vicinity of the Bellefonte nuclear units. Again,
20 contemplating four units, 9-D addressed thermal and
21 check discharges. And 9-E suggests that TVA has used a
22 biased rating system to justify certain of its analyses,
23 and has pointed out the declaration of Shawn Young is
24 relied on in support of the contentions.
25 But much like the other contentions, proposed

1 Contention 9, again, lacks adequate support and fails to
2 raise a genuine issue regarding any finding that must be
3 made in the context of this proceeding, this
4 construction permit proceeding. Despite the bare words
5 that they seek to question the adequacy of the
6 environmental assessment regarding the resumption of
7 construction, I think it can be said about the petition
8 as well as the declaration, that they ignored the NRC
9 early environmental statement and addressed only
10 purported impacts associated with operation of the
11 facility and in particular, the cumulative impacts of
12 operating four units.
13 The impacts that may result from operation at
14 Bellefonte Units 1 and 2 are clearly beyond the scope of
15 this narrowly focused good cause proceeding. Moreover,
16 like an earlier contention, this one seeks to raise
17 essentially the same issue as the Board admitted, in the
18 ongoing Bellefonte units 3 and 4 proceeding and there I
19 referred to Contention 8, which I believe is NEPA 8 in
20 that proceeding consideration of impacts of future
21 operation is a potentially admissible issue in the
22 context of a combined license proceeding, a COLA
23 proceeding related to Bellefonte Unit 3 and 4. But it
24 is not in the context of a construction permit such as
25 we are here concerned about, and for that reason, should

1 be rejected.

2 Again, finally, and to respond to the Board's

3 question; to the extent an admissible contention could

4 be proffered, it would be in the context of the issuance

5 of operating licenses should TVA pursue that course in

6 the end. Thank you.

7 JUDGE BOLLWERK: Judge Baratta, any questions?

8 JUDGE BARATTA: : No.

9 JUDGE BOLLWERK: : Judge Sager?

10 JUDGE SAGER: : No questions.

11 JUDGE BOLLWERK: : I guess basically heard the

12 same responses, which is this is an OL issue.

13 MR. CHANDLER: That's correct.

14 JUDGE BOLLWERK: And let's go ahead and move

15 on to the Staff.

16 MS. JONES: Judge, for the sake of not being

17 repetitious, I will just make two points but I suspect I

18 will be repetitious. That is, following what he just

19 said, these are issues that are more appropriately

20 raised at the operating license application review

21 stage, or TVA determines it wants to proceed in that

22 direction. And the other point I want to make on the

23 that the issues raised in Contention 9 were based on the

24 environmental reports for units 3 and 4, and so

25 Petitioners hadn't really conveyed a real case for why

1 and how that information would contradict the
2 information that we used here for the request for
3 reinstatement.
4 The request for reinstatement is limited to
5 completion of construction for units 1 and 2 and does
6 not encompass operational issues which is exactly what
7 Contention 9 seems to be concerned with.
8 JUDGE BOLLWERK: Anything further?
9 MS. JONES: No.
10 JUDGE BOLLWERK: Judge Baratta?
11 No.
12 JUDGE SAGER: : Nothing here.
13 JUDGE BOLLWERK: : All right, let me go back
14 to Mr. Dougherty.
15 MR. DOUGHERTY: : Your Honor, I am not
16 familiar to deal with this, but it is my understanding
17 that the issues we are presenting in the contention were
18 issued that were resolved at the CP stage when the CPs
19 were issued 35 years ago. If that is the case, we are
20 saying that this one, in particular, deserves to be
21 revisited because of the new information regarding the
22 change in environmental circumstances. But I'm also
23 going to say that if this is the first time these issues
24 have ever been raised or considered by the Staff, they
25 should be addressed in the OL.

1 JUDGE BOLLWERK: Thank you.
2 JUDGE BARATTA: Nothing.
3 JUDGE SAGER: Nothing here.
4 JUDGE BOLLWERK: That, then, we have been
5 through the seven contentions and well as the question
6 of good cause, generally, which concludes what the board
7 had an interest in terms of hearing an argument from the
8 parties. In terms of the argument, we would like to
9 express the Board's appreciation to all of you.
10 Mr. Dougherty, you said you have not done this in a
11 while, but you sound like you have been up to speed as
12 far as I could tell. So we appreciate your efforts for
13 coming in on the crunches, a small physical problem, but
14 we do appreciate you coming and the other counsel
15 regarding providing us with arguments.
16 And now a couple of things for you all to
17 think about. This case obviously now is up in the
18 Board's hands. Given the arguments we have heard, we
19 have to make a decision about standing issues and the
20 admissibility of contentions. That we will do in good
21 course. We have a general provision in the rules that
22 says 45 days from the time the Petitioner's refile is
23 filed and we make our decision or tell the Commission
24 what the issue -- what the problem is, and we will do
25 one or the other. So, in terms of, however, you all

1 going forward, some things to think about and, again,
2 this is assuming the contention is admitted and the
3 Board has not made decisions about what contentions may
4 or may not come in, think about in setting a section
5 2.332(b) schedule. The Board at this point would be
6 operating under the presumption that a merits
7 determination regarding admitted issues need not make
8 issue of satisfy, staff or environment review unlike the
9 licensing cases where we awaiting Bellefonte, the COL,
10 or Vogtle, we are waiting staff review documents to move
11 forward on the merits of the contentions, these
12 contentions and these that were admitted, basically, we
13 would be good to go, I think, moving forward in terms of
14 the merits.
15 As such, relative to any discussions that
16 might occur regarding initial schedule for the
17 proceeding, we ask you consider carefully the length of
18 time you require for discovery authorized under the
19 agency rules of practice and whether summary disposition
20 is appropriate relative to admitted contention and how
21 much time is needed to prepare for and conduct an
22 evidentiary hearing regarding each admitted contention.
23 We are some a different situation potentially if the
24 contention is admitted. We are in some of the other
25 licensing cases where we waiting for something to

1 happen. I don't think we are waiting for anything
2 further to happen. This case could move forward with
3 the merits relatively promptly, so whatever discovery
4 provisions would apply.
5 Also, assuming the contention is admitted, the
6 parties should be aware that discovery provisions under
7 Section 2.336 including the need for the staff to
8 provide a hearing file would be activated regardless of
9 whether there is a board order or party discovery
10 assuming contention is admitted. Also, relative to the
11 general discovery and the party may wish to discuss
12 whether they want to prepare on discovery, and produce
13 privileged laws or waive such laws as for instance was
14 done in the Bellefonte combined licensed proceeding.
15 Finally, with respect to the procedures
16 potentially going forward given the proceeding, the
17 board will assume we will not receive requests for
18 protective orders but if that is not the case, you will
19 need to discuss that and let us know.
20 Those are just some heads up assuming we were
21 to move forward and admit a contention, and I am not
22 saying that will or won't happen, but something for you
23 to think about as we go forward. At this point, let me
24 see if anything any of the parties want to bring to the
25 Board's attention relative to what you've heard today or

1 like to be heard or any questions on what I have just
2 said.
3 MR. DOUGHERTY: I'd like to be heard for two
4 minutes. What is notable about this case is both the
5 dissenting opinion of Mr. Williams on the Staff as well
6 as the repeated and very strong dissents articulated by
7 Chairman Jaczko. And again, I would like you to pay
8 attention to these people who know what they are talking
9 about making valid points and there is a list in some
10 agencies to brush claims of whistleblowers under the rug
11 and it is incumbent on you to read these statements
12 carefully. What Williams called for was a robust
13 process having been on the inside, being familiar with
14 the facts, he's seen issues that in his view, need to be
15 illuminated. And the only way to do that is in an
16 adjudicatory proceeding like this, not the kind of thing
17 where we say, the Staff will work it out with TVA.
18 We believe, of course, we have a right under
19 the act to adjudicatory proceeding on that. The other
20 thing that strikes us about this is that in many ways we
21 are in the same position in this proceeding as we are in
22 the Units 3 and 4 COL proceeding, is that we don't know
23 what TVA wants to do. And in many respects, what they
24 want to do is going to bear on the contentions. For
25 example, if there are thermal discharges, it matters

1 whether they are going to resume construction on one or
2 two, or zero or build a new one.
3 So, in many ways the facts, they have not
4 announced what they plan to do complicates our job
5 immeasurably, and I'm guessing it is unusual for any
6 Board to consider a proposal, that's unclear because we
7 don't have numbers associated with it and we don't
8 really know if the company wants to do it. So I suggest
9 a way of proceeding might be to answer the most
10 important, hardest question in front of us right now
11 which is, what is a good cause standard and what really,
12 is TVA's burden of going forward with the Staff and our
13 burden as Petitioners. And if we can get an answer, the
14 proper resolution of the other factual and environmental
15 contentions will be sharpened considerably.
16 JUDGE BOLLWERK: All right, thank you, sir.
17 Anything that TVA or the Staff want to say in response
18 to that?
19 MR. CHANDLER: We think the standard for good
20 cause is aptly defined in the Commission's precedent as
21 well as in Commission policy statements and we do not
22 see any need for further discussion on those issues. We
23 do have a question with respect to whether the Board
24 this morning, excuse me, this afternoon, intends to hear
25 anything further with respect to standing or with

1 respect to the procedures to be followed in this
2 proceeding.
3 JUDGE BOLLWERK: I don't think those issues
4 were necessarily raised. I think we're fine with those.
5 We don't need to have anything further on those. And
6 now to the staff, anything the Staff wants to say?
7 MS. JONES: No, we have nothing further.
8 MR. DOUGHERTY: Nothing further.
9 JUDGE BOLLWERK: At this point, then let me --
10 a couple of other administration matters. Again, anyone
11 that happened to continue to be watching these
12 proceeding over the webstreaming, if you have any
13 comments on the webstream, how it worked for you, how
14 you see any problems, issues, again, the e-mail address
15 would be webstreammaster all one word,
16 webstreammaster.resource.NRC and how the proceeding came
17 across in terms of ability to watch this notwithstanding
18 the fact we were to have access to the proceeding
19 notwithstanding we were in Rockville, rather than being
20 in the Alabama area. So, we appreciate hearing from you
21 one way or the other if you have, if you have any
22 comment.
23 The staff, Andy Wilkie, Mack Cuthcin and
24 Government Solutions, the contracting staff, we
25 appreciate putting together the video conferencing and

1 web streaming, and our I.T. specialist Joe Deucher and
2 the web streaming folks we are dependent on. And
3 everything went smoothly as far as I could tell, so I
4 appreciate their efforts, and law clerk and SherVerne
5 Cloyd and the administrative staff were very important
6 for setting this process up and getting it forward, and
7 Lorraine Carter and our real time reporter, and our
8 person here, this person. It is never an easy thing to
9 keep up with the rapid conversation that goes on between
10 the lawyers but we do appreciate the realtime efforts
11 you made in terms of the realtime court reporting for
12 the webstreaming feed we have, which is very important
13 for a lot of people to access it and understand what is
14 going on.
15 Finally, I make mention of something that I
16 guess was clear to the Applicant when they came in this
17 morning but may not have been clear to some of the
18 others. Over the weekend, when I came in at 1:00 on
19 Saturday, we had a flood in the hall right over here
20 and, in fact, we had a water fountain that sprung a leak
21 and caused a cascade of water down the stairway.
22 Fortunately, and also, not necessarily into this room
23 but into the hall and into the Applicant's conference
24 room. And the NRC staff and contractor staff were
25 basically able to dry it out and got it up and operating

1 this morning. So we were able to use the room as well
2 as conduct this proceeding, and I was concerned to find
3 the water all over the place. But it worked out that
4 they did a terrific job getting it up and operating this
5 morning. So, I do appreciate that. Thanks to them for
6 staying on top of that.
7 At this point, Judge Baratta, anything you
8 want to say?
9 JUDGE BARATTA: : No.
10 JUDGE BOLLWERK: Judge Sager, anything on your
11 end?
12
13 JUDGE SAGER: Nothing here.
14 JUDGE BOLLWERK: We appreciate the efforts of
15 counsel. I found the arguments very illuminating, and
16 you clearly spent a lot of time putting these together.
17 And again, Mr. Dougherty, you are getting up to speed.
18 What proceeding were you in years ago?
19 MR. DOUGHERTY: North Anna re-racking before
20 in 1979.
21 JUDGE BOLLWERK: Not around as long as
22 Mr. Chandler has been around. We appreciate your
23 efforts and of all counsel today, and we are taking them
24 under consideration and we will issue a decision
25 hopefully within the next about 30 days or thereabouts.

1 Thank you very much.
2 We stand adjourned.
3 (Whereupon, the proceedings were concluded)
4
5 CERTIFICATE OF REPORTER
6
7 This is to certify that the attached
8 proceedings before the United States Nuclear Regulatory
9 Commission in the matter of Tennessee Valley Authority,
10 Bellefonte Nuclear Power Plant, Docket Nos. 50-438 and
11 50-439 on March 1, 2010, U. S. Nuclear Regulatory
12 Commission, Washington, D.C. 20555-001, was held as
13 herein appears and that this is the Original Transcript
14 thereof for the file at the U.S. Nuclear Regulatory
15 Commission taken by Caption Reporters Inc., and that the
16 transcript is a true and accurate record of the
17 foregoing proceedings.
18
19
20 Lorraine Carter, RPR
21 Official Court Reporter
22
23
24
25