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NUCLEAR REGULATORY COMMISSION

Title: Southern Nuclear Operation Company
Vogtle Electric Plant, Units 3 & 4

Docket Number: 52-025-COL and 52-026-COL

ALSBP Number: 10-903-01-COL-BD02

Location:
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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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In the Matter of: :

SOUTHERN NUCLEAR : Docket Nos. 52-025-COL and

OPERATING CO. : 52-026-COL

(Vogtle Electric : ASLBP No. 10-903-01-COL-

Generating Plant, : BD02

Units 3 and 4) :

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Tuesday, October 19, 2010

Nuclear Regulatory Commission

Hearing Room T-3 B45

11545 Rockville Pike

Rockville, Maryland

BEFORE:

G. PAUL BOLLWERK, III, Chairman

DR. JAMES F. JACKSON, Administrative Judge

NICHOLAS G. TRIKOUROS, Administrative Judge

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PAGE

Opening Comments by Chairman	4
Presentation by Joint Intervenors	15
Applicant Response	60
Staff Response	86
Rebuttal by Joint Intervenors	106

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

(9:02 a.m.)

CHAIRMAN BOLLWERK: Let's go on the record, please.

Good morning. Today we are here to conduct a prehearing conference and oral argument in a combined license or COL proceeding under Part 52 of Title 10 of the Code of Federal Regulations, also referred to as the CFR.

In accord with the Licensing Board Order issued on October 6, 2010, this prehearing conference has been convened in response to an August 12, 2010 submission by several groups, specifically the Blue Ridge Environmental Defense League, Center for Sustainable Coast, and Georgia Women's Action for New Directions, seeking the admission of what they refer to as a new contention denoted as Contention SAFETY-2.

With that contention, Joint Intervenors, as they denominate themselves, seek to challenge the adequacy of the containment and coating inspection program for the two new advanced passive or AP1000 reactor units that Applicant Southern Nuclear Operating Company, or SNC, proposes to construct and operate at its existing Vogtle Electric Generating Plant site near Waynesboro, Georgia.

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1 By way of background, I would note that
2 previously the three Administrative Judges on this
3 Atomic Safety and Licensing Board were members of a
4 Licensing Board that was created to consider a
5 November 2008 hearing petition filed by several of the
6 organizations that are part of Joint Intervenors, as
7 well as a number of other organizations, in which they
8 proffered three contentions challenging the SNC COL
9 application for proposal of Vogtle Units 3 and 4.

10 Although that Licensing Board, in March
11 2009, admitted one contention, SAFETY-1, which
12 concerned low level radioactive waste storage at the
13 Vogtle facility, in May 2010 that Board granted
14 summary disposition in favor of Applicant SNC
15 regarding that contention.

16 No petition for review was filed
17 requesting that the Commission examine that Board
18 action, nor did the Commission take sua sponte review
19 of that decision pursuant to 10 CFR Section
20 2.341(a)(2) or (b)(1). The contested portion of this
21 COL proceeding thus was terminated.

22 As a consequence, when Joint Intervenors
23 directed their August 12th request to admit new
24 contention SAFETY-2 to the three members of that
25 Licensing Board by memorandum dated August 17, 2010,

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1 that Board sent their submission to the Commission for
2 its consideration and appropriate action.

3 By order dated August 25, 2010, the
4 Secretary of the Commission referred Joint
5 Intervenors' August 12th request to the Atomic Safety
6 and Licensing Board Panel's Chief Administrative Judge
7 who, in turn, appointed the three of us on August 27th
8 as the members of a new Board with the authority to
9 rule on Joint Intervenors' request.

10 With respect to our conduct of the
11 adjudicatory process relating to Joint Intervenors'
12 August 12th submission, we are three independent
13 Administrative Judges appointed by the Commission as
14 members of the Atomic Safety and Licensing Board Panel
15 and designated to serve on a Licensing Board to
16 preside over any hearing regarding any contested
17 matters raised regarding the SNC application.

18 The Panel's Administrative Judges do not
19 work for or with the NRC staff relative to the staff's
20 license application review. Rather, we are charged
21 with deciding whether the issues proffered by those
22 requesting a hearing, such as Joint Intervenors, are
23 admissible and, for those issues we find litigable,
24 making a determination regarding their substantive
25 validity in terms of the grant conditioning or denial

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1 of the requested COL.

2 As was the case with the Board previously
3 designated in this COL proceeding, our decisions on
4 hearing matters generally are subject to review, first
5 by the Commission as the Agency's supreme tribunal,
6 and then by the federal courts including, in
7 appropriate instances, the United States Supreme
8 Court.

9 Relative to the specific matters before us
10 today in this prehearing conference, both NSC and the
11 NRC staff have raised a challenge to the standing or
12 legal interest of the three groups that jointly
13 submitted the August 12th request challenging the SNC
14 COL application for Vogtle Units 3 and 4.

15 In addition, Applicant SNC has questioned
16 whether Joint Intervenors' request can fulfill the
17 requirements of Section 2.326 for reopening an
18 otherwise closed adjudicatory record, while SNC and
19 the staff also question whether Joint Intervenors'
20 request complies with the requirements governing non-
21 timely and new contentions under Section 2.309(c)(1)
22 and (f)(2), as well as the Section 2.309(f)(1)
23 contention admission standards.

24 Finally, SNC has challenged the
25 September 22, 2010, request by Joint Intervenors to

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1 submit out of time their reply to the SNC and staff
2 answers to Joint Intervenors' request to admit a new
3 contention.

4 This is a matter that arose when, on the
5 day Joint Intervenors' reply pleading was due, the
6 attorney who initially requested Joint -- who
7 initially represented Joint Intervenors withdrew from
8 this proceeding without filing that pleading. The
9 participants will have an opportunity to make oral
10 presentations on these questions this morning.

11 Before we begin these presentations, I
12 would like to introduce the Board members. To my left
13 is Judge Nicholas Trikouros. Judge Trikouros is a
14 nuclear engineer and a full-time member of the Atomic
15 Safety and Licensing Board Panel. Joining us this
16 morning by teleconference is Dr. James Jackson. Judge
17 Jackson, likewise, is a nuclear engineer and a part-
18 time member of the Licensing Board Panel.

19 My name is Paul Bollwerk. I am an
20 attorney, and I am the Chairman of this Licensing
21 Board.

22 At this point, I'd like to have counsel
23 for the various participants identify themselves for
24 the record. Why don't we start with the Joint
25 Intervenors, then move to the Applicant, and, finally,

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1 to the NRC staff. Gentlemen?

2 MR. RUNKLE: Your Honor, my name is John
3 Runkle. I'm representing the Blue Ridge Environmental
4 Defense League, the Georgia Women's Action for New
5 Directions, and the Center for a Sustainable Coast.
6 With me at counsel table is Louis Zeller, who is the
7 Science Director for Blue Ridge Environmental Defense
8 League. And Mr. Zeller has been involved in a number
9 of matters before this Commission looking at other
10 applications and their early site permits.

11 CHAIRMAN BOLLWERK: All right. Thank you,
12 sir. The Applicant, please?

13 MR. BLANTON: Good morning, Your Honors.
14 This is Stan Blanton for Southern Nuclear Operating
15 Committee, the Applicant. With me at counsel table I
16 have Kathryn Sutton, my co-counsel, who is a partner
17 at Morgan, Lewis & Bockius, and also to my left I have
18 Mr. Jason Redd, who is a senior engineer with Southern
19 Nuclear Operating Committee.

20 CHAIRMAN BOLLWERK: All right. Thank you.
21 And the NRC staff, please?

22 MS. HODGDON: I am Ann Hodgdon for the NRC
23 staff. Co-counsel, with me to my right is co-counsel
24 Stephanie Liaw, who will present argument on behalf of
25 the staff. And to my left is Ravi Joshi, who is

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1 project manager for the Vogtle -- regarding the Vogtle
2 -- staff's review of the Vogtle COL application.

3 CHAIRMAN BOLLWERK: All right. Thank you
4 very much. Glad to have all of you with us today.

5 I would note that we are conducting this
6 proceeding from the Licensing Board Panel's Hearing
7 Room at the NRC headquarters in Rockville, Maryland.
8 But the conference is also available for viewing at a
9 conference room in the NRC's Region II offices in
10 Atlanta, Georgia, via videoconference, for the benefit
11 of those living in the vicinity of the Vogtle
12 facility.

13 As my previous comments indicated, during
14 today's conference we will be entertaining
15 presentations from the participants regarding various
16 procedural matters. At some point in the future,
17 however, in accord with Section 2.315(a) of Title 10
18 of the Code of Federal Regulations, the Board may
19 issue a notice that, among other things, may indicate
20 that members of the public will be afforded an
21 opportunity to provide, as appropriate, oral limited
22 appearance statements setting forth their views
23 concerning any contested matters relative to the
24 proposed COL for the two new Vogtle units.

25 In that instance, or a subsequent notice,

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1 the Board will outline the times, places, and
2 conditions of participation relative to any
3 opportunity for oral limited appearance statements.
4 In the interim, as the Board noted in its
5 September 3rd issuance in this case, any member of the
6 public can submit a written limited appearance
7 statement providing his or her views regarding the
8 issues in this proceeding.

9 Those written statements can be sent at
10 any time by regular mail to the Office of the
11 Secretary, U.S. Nuclear Regulatory Commission,
12 Washington, D.C. 20555-0001, Attention: Rulemakings
13 and Adjudication Staff, or by e-mail to hearingdocket
14 -- that's all one word -- at nrc.gov.

15 A copy of the statement also should be
16 provided to me, as the Chairman of this Licensing
17 Board, by sending it by regular mail to my attention
18 at the Atomic Safety and Licensing Board Panel, Mail
19 Stop T-3F23, U.S. Nuclear Regulatory Commission,
20 Washington, D.C. 20555-0001, or by e-mail to
21 paul.bollwerk@nrc.gov.

22 And, again, the submission information is
23 provided in the Board's September 3rd issuance, which
24 is available in the electronic hearing docket on the
25 Agency's website, www.nrc.gov.

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1 Finally, as an informational matter, I
2 would note that under the current provisions of the
3 Atomic Energy Act, regardless of the admissibility of
4 any of Joint Petitioners' contentions, the agency must
5 conduct a separate mandatory hearing concerning SNC's
6 COL application for proposed Vogtle Units 3 and 4.

7 That hearing, at which SNC and the NRC
8 staff would be the parties, would deal only with
9 matters other than those admitted for litigation
10 before this Board or the prior Board, and would
11 provide the basis for required health and safety,
12 environmental, and common defense and security
13 findings associated with the application and the NRC
14 staff's Safety and National Environmental Policy
15 Action, or NEPA, reviews of the application.

16 Under current agency policy, the mandatory
17 hearing for the Vogtle Units 3 and 4 COL application
18 will be conducted by the Commission itself.

19 Returning to the matters before the Board
20 today, with respect to the order of presentation by
21 the participants to this prehearing conference, in our
22 October 6th order we outlined a schedule that affords
23 an opportunity for the participants to address the
24 contested matters now before the Board.

25 In that regard, we'd request that before

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1 starting on the issues for which Joint Intervenors
2 have been afforded the opportunity for oral argument
3 and rebuttal, their counsel should indicate how much
4 the Joint Intervenors' total time allocation for that
5 issue he wishes to reserve for rebuttal. The same
6 would be true for Applicant's counsel relative to the
7 agreed allocation of time between SNC and the staff.

8 Toward the end of the allocated argument
9 time, the Board will provide counsel with notice of
10 the need to finish his or her presentation. In making
11 their arguments, the participants should bear in mind
12 that we have read their pleadings, and, as such, they
13 should focus their presentations on the critical
14 points in controversy, as those have emerged as a
15 result of the various participant filings over the
16 last two months, as well as the questions outlined by
17 the Board in its October 6th scheduling issuance.

18 Finally, at some juncture we would like to
19 have a brief discussion regarding some of the
20 administrative details involved in this proceeding.

21 And relative to administrative matters, I
22 would note that this is my cell phone, which I have
23 turned off. I am going to stick it in my pocket, and
24 I am not going to turn it on again until we are in a
25 recess. I would request that everyone else do the

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1 same thing with his or her cell phone, or at least put
2 it on vibrate.

3 But if you put your phone on vibrate and
4 it goes off while we're in session, and you wish to
5 answer it, you would need to leave the Hearing Room
6 before you have your conversation. We appreciate very
7 much everyone abiding by this protocol at any time
8 this prehearing conference is in session.

9 Unless the participants have anything at
10 this point they need to bring to the Board's
11 attention, let's begin with Joint Intervenors'
12 presentation regarding their motion for leave to file
13 their reply pleading out of time, their standing, and
14 the timeliness and admissibility of Contention
15 SAFETY-2.

16 So, Mr. Runkle, I will turn to you. And
17 how much time do you wish to reserve for your
18 rebuttal?

19 MR. RUNKLE: Chairman, we will reserve 10
20 minutes for rebuttal.

21 CHAIRMAN BOLLWERK: Ten minutes, all
22 right.

23 MR. RUNKLE: And, sir, I seem to be the
24 only one hopping up and down, so do you want me to sit
25 down?

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1 CHAIRMAN BOLLWERK: You should certainly
2 sit down. Absolutely. The room is designed for that.
3 It works best that way. Those microphones are
4 actually fairly directional, so it's -- right. The
5 mics are directional, so make sure you are speaking
6 into the mic. That would help both us and the folks
7 in the audience.

8 MR. RUNKLE: And the mics are on full-time
9 and they're --

10 CHAIRMAN BOLLWERK: They're on, unless you
11 press the button and the green light goes off. Right.

12 MR. RUNKLE: Thank you. First of all, I
13 want to express my appreciation to the Board, and also
14 to the other parties, for allowing me to go on a
15 family vacation. But if I do sort of mix up Vogtle
16 plants in Georgia with Place des Vosges in Paris, just
17 bear with me on that, because I am still a little
18 behind the time.

19 What we are bringing to the Board this
20 morning is a new proposed contention. We are calling
21 it SAFETY-2. And it is in the original filing, but I
22 think it bears being put into the record in full.

23 It says, "The Southern Nuclear Operating
24 Company's combined operating license application fails
25 to demonstrate that the Vogtle Electric Generating

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1 Plant Units 3 and 4 can be operated safely, because
2 the containment and containment coating inspection
3 being proposed in the final safety analysis report --
4 see the COLA at the pages 6.1-1 to 6.1-4 -- fails to
5 provide assurance against corrosion-caused
6 penetrations for the containment that would lead, in
7 the event of an accident, to leakage to the
8 environment of radioactive materials in excess of
9 regulatory requirements."

10 This contention meets all of the
11 requirements for contentions. It expresses a
12 significant issue that needs to be resolved. It cites
13 directly to both the COLA and the FSAR, and it is
14 supported by an affidavit and report by an expert
15 witness.

16 This issue came up in front of this Board
17 through an earlier report going back looking at -- by
18 a group called the AP1000 Oversight Group, had looked
19 at the AP1000 designs and had looked at the various
20 COLAs for the different reactors. And when it became
21 apparent that there were corrosion problems at several
22 of the existing nuclear plants -- they had gone back
23 the last couple of years -- that the corrosion was a
24 problem and that the liner, the zinc coatings, and the
25 inspection of those were not adequate, we asked Arnie

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1 Gundersen, who is the Chief Engineer of the Fairewinds
2 Associates, to look at the problem to see how that
3 kind of problems with the corrosion and the lack of
4 inspection, and just the integrity of the whole
5 containment structure, how that would deal with the
6 AP1000 reactors.

7 So Mr. Gundersen prepared a report for us
8 pulling from a lot of various places, past inspection
9 reports for several of the other reactors. He had
10 done some work looking at the corrosion problems and
11 the holes and put together an analysis that -- looking
12 at the AP1000 design, that if there was a hole in the
13 containment, and in case of an accident building up
14 pressure within the containment, that the pressurized
15 steam would go out that hole and be vented into the
16 atmosphere.

17 And, again, this is in terms of an
18 accident, you know, a fairly severe incident. But the
19 design of the AP1000 reactor is open to the
20 environment, and that is part of the design of it.

21 Now, as that issue became apparent, we
22 brought it to the Nuclear Regulatory Commission, who
23 then forwarded it to the ACRS, and Mr. Gundersen and
24 I -- I, in fact, was counsel for that -- presented to
25 the ACRS and discussed Mr. Gundersen's finding of the

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1 AP1000, what the designs were.

2 And in that discussion, I mean, we -- as
3 part of this record, is Mr. Gundersen's report, that
4 supports his affidavit in this case. And the
5 presentation was I think very important and really
6 focused in on this -- these issues of the need for
7 inspections of containment and the containment
8 coating.

9 But in the colloquy with -- between Mr.
10 Gundersen and Chairman Harold Ray of the ACRS, it was
11 -- in was -- those questions and answers I think were
12 vitally important to what this Board has to decide.
13 And as Chairman Ray -- and, again, this is the
14 original filing -- while the coating certainly is an
15 important element of this whole system and the points
16 you make about accessibility for inspection are ones
17 that we have yet to look at. So the ACRS hasn't
18 looked at this, and the input that we were providing
19 was helpful in focusing attention.

20 And it is also important that when some of
21 this, as a design flaw with the AP1000 reactor, goes
22 into the design control documentation, looking at the
23 certification of the AP1000 design, that is a design
24 flaw. But as Chairman Ray pointed out, the actual
25 differences in the coatings and the differences in the

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1 inspection regimen proposed at any individual reactor
2 is part of that combined operating license
3 application.

4 And this is -- this is -- I mean, this is
5 an expert who has -- is very well familiar with
6 applications, you know, look at the technical aspects.
7 ACRS had not looked at this particular problem of the
8 coatings and the inspections. But Chairman Ray was
9 also very clear that, you know, this is a difference
10 here, looking at any particular COLA, and looking at
11 the inspections that they are trying to do, and that
12 kind of thing.

13 So after this discussion, and until the
14 actual wording in the transcript came out, the
15 transcript of that whole presentation is very
16 important, probably should be part of this record, the
17 groups that were -- had previously intervened in the
18 Vogtle plant said, "Well, this is an important issue
19 that we had not been able to raise before. We didn't
20 have that information. It is new information."

21 Putting together all of the --

22 CHAIRMAN BOLLWERK: Let me just -- can I
23 stop you? What is the new information?

24 MR. RUNKLE: The new information is both
25 the Gundersen's report putting together the analysis

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1 of looking at the containment flaw and the different
2 holes and whether the inspection regimes will take
3 care of that, and I think as important new information
4 is the expert opinion by Chairman Ray that this is not
5 all just into the design. This is an issue that comes
6 in front of the COLA.

7 CHAIRMAN BOLLWERK: Well, if this -- I
8 mean, I guess one concern I have is that if this was
9 an issue then, why wasn't it an issue when the initial
10 petition was filed?

11 MR. RUNKLE: Because the analysis had not
12 been put together. And I think that the NRC case
13 law --

14 CHAIRMAN BOLLWERK: Was the information
15 there to put the analysis together?

16 MR. RUNKLE: Bits and pieces of it were,
17 and, I mean, just to -- as an argument absurdum, I
18 mean, if -- if there is information about gravity, and
19 Isaac Newton looked at gravity 400 years ago, and
20 anything that has to do with gravity, I mean, the
21 argument is you have to be -- do the analysis.

22 You have to look at the different reactors
23 that had leaks and cracks with them from the
24 corrosion. You have to put that all together. You
25 have to be able to look at what the different

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1 application has in their COLA. So it's new
2 information here.

3 JUDGE TRIKOUROS: The reason that one does
4 an inspection is to look for something. The fact that
5 you find something when you do an inspection is a good
6 thing, not a bad thing necessarily. When I have my
7 brakes checked, I expect that there is a likelihood
8 that I am going to be told that the brakes need to be
9 fixed.

10 So clearly the inspection programs that
11 are conducted in current plants, and will be in the
12 AP1000, are designed to find such things. So why is
13 it that the fact that they found such things is now
14 new information that is indicative of a design flaw in
15 the AP1000?

16 MR. RUNKLE: Well, in looking at --
17 specifically at the Vogtle plant, and I think that we
18 need to -- since we are addressing that, we need to
19 look at a proposed plant in Georgia that is open to
20 the environment.

21 And I don't know how much time you all
22 spend in Georgia, but it is -- for significant lengths
23 of time it is very humid. The air inside the outer
24 containment -- in containment is very humid. Water
25 pools up. There are places within the Vogtle plant,

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1 as proposed, that will not be able to be inspected or
2 will be extremely difficult to inspect.

3 As Mr. Gundersen says in his report, and
4 also in his affidavit, I mean, he supervised 16
5 inspectors at one of the plants, and knows full well
6 that even -- that there are -- that you cannot inspect
7 a lot of those places where the water would pool up
8 and cause the most corrosion.

9 And so you need to be -- there are other
10 ways besides the visual inspection. I mean, you stick
11 your head out into a -- you know, into a door in the
12 containment and try to look around. It is very
13 uncomfortable. It is something that you don't spend
14 a lot of time in. A lot of the corrosion is covered
15 up by the coatings. In fact, as Mr. Gundersen says,
16 may cause even more problems in there depending on
17 what kind of coating they do as part of their
18 operation and maintenance and what -- their
19 inspection.

20 So this is -- this is the problem. At the
21 Vogtle plant, looking at their COLA and their FSAR,
22 their inspection is just the minimum. It is not going
23 to -- it is not going to discover the kinds of holes
24 and corrosion problems that that particular plant --
25 well, and probably all of the AP1000 designs will have

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1 that the existing plants didn't have.

2 And as the other parties have argued,
3 well, it is a -- you know, it is a thicker steel.
4 Well, if it corrodes in eight years instead of five
5 years, or is -- since it is open to the environment,
6 it may have, you know, considerably more water vapor
7 and condensation inside of it, it may have additional
8 -- it may have additional corrosion problems that
9 other reactors may not have.

10 JUDGE TRIKOUROS: If we were to compare
11 the AP1000 to current plants, specifically current
12 PWRs, the -- I think one could say the same things
13 about current plants.

14 Now, for example, the liner of a PWR
15 containment is not inspectable from the concrete side.
16 The entire liner cannot be viewed on that side. I
17 don't know to what extent Mr. Gundersen found that the
18 failures that have occurred have been initiated on
19 that side or not. But the -- but, clearly, one could
20 say that there are areas of containment that are not
21 inspectable.

22 The other -- and the other point I wanted
23 to make is that -- and I'm looking for you to tell me
24 where this -- where your contention is different,
25 where the AP1000 is different in this regard. The

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1 containment of a current PWR is open to the
2 environment as well, or a substantial portion of it
3 is.

4 And, clearly, there is a concrete barrier,
5 but the concrete barrier is not credited in the sense
6 that when integrated leak rate tests are conducted
7 they are looking to see if technical specifications
8 are met. And they don't differentiate between liners
9 and concrete, for example.

10 So I'd like to understand, where are the
11 differences on the AP1000 to that?

12 MR. RUNKLE: I think my first response is
13 this is the kind of information and testimony that
14 would come out on a hearing, this kind of very
15 technical and looking at experts and analyzing the
16 differences between what is going on with the existing
17 plants and what is going on -- would go on with the
18 proposed Vogtle plant. So this is the matter for
19 hearing.

20 Now, it is -- I'm pushing my knowledge on
21 this, but the existing plants don't have the annular
22 gap that is unique to the AP1000. So there is
23 actually a gap between the metal and the outside that
24 is open to it, so there is more room on the outside of
25 the containment to allow moisture to get into it.

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1 So you might be able to inspect the
2 outside of the steel containment, but there is --
3 there are many places in there, such as the hangs that
4 hold the two together at the bottom, where
5 condensation would cause more corrosion problems.

6 And it is the same problem in putting on
7 the zinc coating. It would be hard to do on a regular
8 basis, given what they say they are going to do. Are
9 you fighting problems, or are you just covering them
10 up? And that seems to be the difference between the
11 existing PWRs and the AP1000.

12 JUDGE TRIKOUROS: So --

13 CHAIRMAN BOLLWERK: Let me just stop one
14 second here and do a video -- or an audio check.
15 Judge Jackson, are you hearing Mr. Runkle okay?

16 JUDGE JACKSON: Yes, I am.

17 CHAIRMAN BOLLWERK: Okay. Apparently,
18 they are having some problems in Region II. So if you
19 could push that mic a little bit closer. You are
20 somewhat softspoken, and we want -- you can't move the
21 mic, but you can probably take the neck and push it
22 closer to your --

23 MR. RUNKLE: All right.

24 CHAIRMAN BOLLWERK: -- mouth. That'll
25 work. Thank you.

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1 MR. RUNKLE: Is that okay?

2 CHAIRMAN BOLLWERK: Appreciate it. That
3 will work.

4 MR. RUNKLE: All right.

5 CHAIRMAN BOLLWERK: Go ahead. Sorry.

6 JUDGE TRIKOUROS: So when you say "design
7 flaw" in the AP1000, you are referring to the actual
8 design of the AP1000 making it difficult to inspect?

9 MR. RUNKLE: Yes, sir.

10 JUDGE TRIKOUROS: And if there is a hole
11 of some sort, a through-wall crack in the containment,
12 that that would to a larger dose offsite.

13 MR. RUNKLE: Yes, sir. And as -- looking
14 at Mr. Gundersen's report, there are diagrams of, you
15 know, normal operation if there was a -- if there was
16 damage to the reactor and there was a release and the
17 pressurize and how that would go directly out the top
18 vent. It's an unfiltered vent, and so there would be
19 a considerable amount of radioactive material.

20 So whether -- I mean, whether the AP1000
21 has a design flaw, which we certainly would allege
22 that it does, that is something that -- you know, that
23 may be in the realm of looking at the -- you know, the
24 design control documents. But how those -- how the
25 present design is to be inspected, maintained,

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1 operated safely by the Vogtle plant -- at the Vogtle
2 plant I think is a matter of a new contention.

3 It is a serious matter. It certainly is
4 -- you know, in looking at -- you know, I have looked
5 at all of the -- you know, the Part 2 of the 10 CFR,
6 all the procedural regulations, and they seem to all
7 overlap to me. There are issues that you have to
8 bring in a timely manner. I mean, there's timeliness.

9 I think your first question in your
10 October 6th order about what has happened after the
11 Commission's order in the Bellefonte case is probably
12 the most important question we have before us here
13 today.

14 There is no -- there is no reference COLA
15 anymore. You know, the Bellefonte has been put in the
16 background. There is -- you know, as a matter of
17 timeliness, we are -- I think we are back to maybe not
18 square one, but certainly on square two in looking at
19 all of the information that goes into the COLA.

20 You know, a lot of the COLA that would be
21 adopted at the Vogtle plant was coming from
22 Bellefonte. We don't have -- at this point, we don't
23 have a Bellefonte reactor anymore, so as a question of
24 timeliness I -- I mean, I don't think there is any
25 sense of urgency in resolving these issues at the

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1 Vogtle plant.

2 Now, I mean, certainly nobody wants to
3 delay it any more, if possible, but on one hand you
4 have a -- what they call a certified design, but there
5 are major components of that design, including the
6 inspection and maintenance, that are -- you know, that
7 have not been reviewed, have not been finalized, have
8 not been approved, by the Commission.

9 So there are -- I mean, it seems to me
10 that, you know, in looking at the COLA there is -- now
11 the COLA that we have in front of us is no longer --
12 no longer makes any sense, because it was adopting the
13 Bellefonte COLA. So as a matter of timeliness, yes,
14 as soon as we had the information from Mr. Gundersen's
15 analysis, we brought that to the attention of the NRC.
16 We didn't look at it.

17 And I think this Texas Utilities case of
18 Comanche Peak, looking at the specific analysis of the
19 Vogtle program, is putting together the pieces of the
20 puzzle. And I think that you can't say that, well,
21 all the parts of the information were there until you
22 actually do the analysis and really come up to get an
23 issue that is pretty grave.

24 Now --

25 CHAIRMAN BOLLWERK: I guess -- I mean, Mr.

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1 Gundersen's analysis is dated April of 2010, and I
2 suspect -- I'm not sure -- did he do that before the
3 ACRS meeting that was coming up on the AP1000? Is
4 that what caused him --

5 MR. RUNKLE: Yes.

6 CHAIRMAN BOLLWERK: -- to do that
7 analysis?

8 MR. RUNKLE: Well, no. We filed it
9 April 21, 2010 --

10 CHAIRMAN BOLLWERK: Right.

11 MR. RUNKLE: -- and asked the ACRS to do
12 a special investigation of it. And then, we scheduled
13 at the next available meeting that they had to give
14 that presentation.

15 CHAIRMAN BOLLWERK: All right.

16 MR. RUNKLE: And it was at that
17 presentation that Chairman Ray was saying, "Yes, part
18 of this is probably, you know, needs to be looked at
19 at -- needs to be looked at as part of the -- you
20 know, the DCD process." But the specific inspection
21 and maintenance and coating that are being proposed at
22 a specific reactor in a COLA is something that should
23 come up through -- you know, through this process
24 of --

25 CHAIRMAN BOLLWERK: Right.

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1 MR. RUNKLE: -- of having a petition
2 hearing.

3 CHAIRMAN BOLLWERK: What would have
4 precluded Mr. Gundersen from doing that analysis and
5 submitting it as part of the November 2008 hearing
6 petition that was originally filed in this case?

7 MR. RUNKLE: I don't know that the -- that
8 anybody was aware of the problem that was before us on
9 this thing. The groups hadn't hired Mr. Gundersen at
10 that point. You know, until the -- you know, there
11 are several times that some of the existing reactors
12 were having through holes and problems with
13 containment holes and breaches, and also with the
14 containment and the coatings.

15 So this -- the AP1000 oversight group went
16 to the NRC and the ACRS in good faith. We were
17 assuming that it was a design issue. But when -- you
18 know, when Chairman Ray says there are specific
19 plants, specific programs, that could affect this
20 positively or negatively, that there are inspection
21 programs, both visual -- I mean, what is at the Vogtle
22 plant right now is an, at most, periodic visual
23 inspection with a certain kind of coating on the
24 containment.

25 There are other kinds of inspection

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1 programs that should be able to find more cracks, more
2 holes, and be able to find out the problems before
3 they happen. That is not what they do. The bare
4 minimum is somebody sticks their head out of a door in
5 the containment periodically in a cold, damp, dark
6 place, and tries to find a -- could be a fairly small
7 crack, and especially one that would be covered up
8 with a zinc coating.

9 And no one I think until actually with the
10 colloquy with the ACRS had any idea what Chairman Ray
11 or the other members of the ACRS would think about
12 this issue. They hadn't considered it before. They
13 thought some of them probably would -- should go to
14 the DCD, but they also thought that there were other
15 issues involved with it.

16 JUDGE TRIKOUROS: Well, I would like to
17 just understand a couple of things. First of all,
18 what Chairman Ray said was in essence stating the
19 obvious or the known. There wasn't anything new in
20 what he said. Programmatic issues are not dealt with
21 in the DCD necessarily, and the COLA itself
22 specifically.

23 I much earlier had indicated that the
24 inspection program was going to be handled as part of
25 the COLA, so there wasn't anything -- it might have

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1 been new to you perhaps. Is that a correct statement,
2 that --

3 MR. RUNKLE: Well, it certainly was new to
4 the Joint Intervenors that this was a potential
5 problem at the Vogtle plant that raised to the level
6 of being an exceptionally grave issue. I think that
7 is the terminology in one of the rules.

8 And it certainly -- if -- given 2008 when
9 the original petition came in on -- and raised, you
10 know, a variety of different contentions, I am not
11 sure that this issue could have been raised at that
12 time, because there wasn't enough information on the
13 existing plants in terms of analysis and ongoing
14 problems with the cracks and the holes of the
15 containment.

16 And, you know, yes, this is a -- at Vogtle
17 it's a wider containment, but it's not that
18 substantially wider. I mean, and so at the corrosion
19 rates that are supported by Dr. Hausler, who reviewed
20 the original report with Mr. Gundersen and looked at
21 the corrosion, yes, it may not be -- it may not be a
22 problem in five years, but in certainly eight or 10
23 years you can have a crack.

24 And I think what the concern of that is,
25 if we are looking at nuclear plants who have had their

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1 operating license continued, and we are looking at
2 plants now that are routinely looked at for 60 years,
3 we are going to be guaranteed that there is going to
4 be holes in these reactors. and particularly in the
5 Vogtle reactor because it is, you know, in a Georgia
6 clime. It is looking at the bare -- the minimum
7 amounts of an inspection in the containment.

8 So I think that is what the difference.
9 That is what makes it I think, in looking at the --
10 sort of the timeliness. But the other part of the
11 timeliness is balancing out the significance of the
12 issue. I mean, I argued a case in front of an
13 Administrative Law Judge in North Carolina, and the
14 big issue was what color the fence would be. And that
15 to me is one end of the -- you know, this continuum.

16 The important issues are, if there is an
17 accident and, you know, pressurized steam that is
18 radioactive goes through this crack, and vent it out
19 unfiltered to the environment, that is a significant
20 public health and safety issue. So on the scale of
21 what color the fence is to, you know, significant,
22 exceptionally grave issue, I think that is the -- that
23 is the balancing thing.

24 JUDGE TRIKOUROS: Well, you know, we need
25 to understand the gravity of this and part of -- a

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1 number of our questions are geared in that direction.
2 And help me understand --

3 CHAIRMAN BOLLWERK: Can I ask one
4 preliminary question? Recognizing you did not file
5 the initial pleading in this case, I -- that was done
6 by --

7 MR. RUNKLE: Yes, sir.

8 CHAIRMAN BOLLWERK: -- different counsel.
9 There is a question here about the application of the
10 agency's reopening standards. Is it your position
11 those standards do or don't apply to this petition?

12 MR. RUNKLE: Yes. I mean, the -- those
13 rules apply to this petition, and -- but I think that
14 the -- whether in the subsequent, you know, petition
15 you have to say according to, you know, this
16 particular section of the rules, the petition itself
17 is, on its face, supported by the affidavit, brings
18 those issues as a -- you know, bring it as an
19 exceptional grave issue, showing the timeliness and
20 the good cause.

21 So that's -- I mean, whether those --
22 whether this is code pleading or not, that you have to
23 have specific, you know, references to the -- you
24 know, to the specific regulation, I would have done it
25 different. You know, counsel relied on what was in

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1 the petition and the affidavit and the report.

2 So I think that in -- I think we can get
3 around that, because -- because the issue is an
4 exceptionally grave one. If it was an issue that
5 anybody could have brought to you in the original
6 petition, I think that would have been different. But
7 this one was not raised. It has not been looked at by
8 the ACRS. The COLA does -- you know, looks at the
9 minimal job of inspection and the -- putting on the
10 coating.

11 So that is I think -- I mean, we could
12 throw the rest of that out and you just -- if this is
13 an exceptionally grave issue, it is just not -- it is
14 not just sufficient to, you know, supplant or fulfill
15 the other requirements. I think you are mandated.
16 You have a requirement to protect public health and
17 safety.

18 JUDGE TRIKOUROS: The exceptional gravity
19 you are associating with the fact that a crack in the
20 AP1000 containment shell would result in an unfiltered
21 release that would exceed the requirements of 52.17 --

22 MR. RUNKLE: And --

23 JUDGE TRIKOUROS: -- that is your -- that
24 is the exceptional gravity?

25 MR. RUNKLE: Well, yes, sir.

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1 JUDGE TRIKOUROS: Okay. Now, if I were to
2 look at a typical PWR --

3 MR. RUNKLE: Okay.

4 JUDGE TRIKOUROS: -- and it had a crack in
5 the containment shell, and there were a loss of
6 coolant accident, it, too, would be released to the
7 environment without filtration. So where -- so I'm
8 trying to understand where there is an exceptional
9 gravity.

10 Now, in a boiling water reactor -- and, I
11 mean, clearly Mr. Gundersen has interchanged BWRs and
12 PWRs, it seemed to me, but in a boiling water reactor
13 there may -- there would be a secondary containment.
14 So I -- certainly that's the case.

15 But, so the exceptional gravity is -- it
16 doesn't appear to me to be there with respect to the
17 AP1000 being significantly different than a current
18 plant PWR.

19 MR. RUNKLE: Well, that may be -- that may
20 be a problem that we can't address here today -- if
21 the PWRs are inherently unsafe because they would vent
22 radioactive material to the environment. But with
23 looking at the AP1000 design, and in particular with
24 the way it is designed at Vogtle, there is a syphoning
25 effect. There is a chimney effect off the top where

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1 it -- just the way it's designed that if there is a
2 hole it is going out.

3 And, Mr. Gundersen, I don't know what --
4 recall what the figure was, but there's -- I mean, the
5 amount of radioactivity that would be syphoned off
6 into the environment with this chimney effect could be
7 significant, and significant more than any PWR.

8 And I'm not sure that's the standard that
9 we want to judge on, that if existing designs are --
10 you know, might have the same problem, I think a more
11 important question is, is the Vogtle design and the
12 way that Vogtle plant -- Southern Nuclear Operating
13 Company is -- will be operating the Vogtle plant, is
14 this going to be a problem there?

15 JUDGE TRIKOUROS: But you have indicated
16 that the -- that your contention is not an attack on
17 the design.

18 MR. RUNKLE: Well, it certainly is part of
19 I think -- is a question that we brought in front of
20 the Nuclear Regulatory Commission. But in front of
21 you, it is not. And to the extent that you think it
22 is, there were -- what was done at the Harris plant
23 was referred to the DCD but keep it open.

24 And that probably would -- you know, since
25 the -- since the design is important to this

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1 consideration, you may want to -- you may want to have
2 a hearing on the inspection and the maintenance of
3 this specific problem, and have the overall design
4 sent through the DCD process. You could do that as an
5 alternative, so you would address specifically what
6 would be proposed at the Vogtle plant. And if there's
7 an overall design flaw of venting out into the
8 atmosphere, then that is something that ought to be
9 resolved, then, through the DCD process.

10 JUDGE TRIKOUROS: Do you -- if I were to
11 ask you if you believe the COLA -- the COL application
12 meets all applicable standards and regulations, what
13 would you say?

14 MR. RUNKLE: Well, I have looked at the
15 initial petition and thought several of those should
16 have been addressed. But the previous panel did not
17 find that they were, and the groups declined to send
18 it to the -- take it up to the Commission. I don't
19 think so.

20 Certainly, in what I have reviewed, and
21 Mr. Zeller and the groups have reviewed, it is -- in
22 this aspect the COLA is not satisfactory, because it
23 does not deal -- the inspection and coating is
24 inadequate.

25 JUDGE TRIKOUROS: The difficulty that at

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1 least I'm having is that the -- your contention is
2 indicating that the -- or indicates that the
3 inspection program will be inadequate, and I say
4 "will," because the inspection program, as far as I
5 know, doesn't -- has yet to be developed for the --
6 for Vogtle. I believe it won't be developed until
7 prior to fuel loading. I'm not positive of that, but
8 I think so.

9 The report by Mr. Gundersen is indicating
10 that an inspection program that does follow existing
11 NRC rules and regulations and standards is inadequate.
12 So, in essence, you are saying that the NRC
13 regulations are inadequate with respect to existing
14 plants, and you are -- I'm asking now, I'm not telling
15 you, and you are extending that to the AP1000.

16 CHAIRMAN BOLLWERK: That is what it seems
17 DOE is saying.

18 JUDGE TRIKOUROS: That's the way it seems.
19 Is that correct?

20 MR. RUNKLE: Well, in looking at Mr.
21 Gundersen's affidavit, in paragraphs 40 and 41, he --
22 I mean, he indicates that coatings can provide some
23 protection when --

24 JUDGE TRIKOUROS: Mr. Runkle, could you
25 speak into the microphone?

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1 MR. RUNKLE: I'm sorry. In looking at
2 paragraph 40 of Mr. Gundersen's affidavit he says,
3 "While coatings can provide some protection when
4 properly applied, there is no assurance that field
5 application can be completely successful."

6 And then, in paragraph 41, how does this
7 impact -- what is in the Vogtle COLA in Chapter 6 of
8 that that makes any difference on how the coatings
9 are? Because they rely on ASTM and some various
10 numbers of those -- of those procedures. And they
11 have failed in the past, as he indicates in his
12 exhibits.

13 And given that the containment and
14 attached hangers will be welded in the field, and
15 coatings will also be provided -- applied in the
16 field, the existing coating application inspection
17 regime suggested by the Applicant does not provide an
18 adequate margin of safety in the Vogtle plant.

19 And so in looking at it -- and this -- I
20 mean, the other parties may disagree with Mr.
21 Gundersen's conclusions. They may disagree with his
22 analysis and with his outcome on this. But those are
23 the very reasons to have a hearing on this matter is
24 to go into the -- how are they inadequate, how is the
25 inspection inadequate, what are they proposing to do

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1 under their present COLA, looking at the inspection
2 regime, looking at the different application bases and
3 those kind of things.

4 And Mr. Gundersen further, you know, lists
5 specific problems at the Vogtle plant that make visual
6 inspections very difficult. Talking about the access
7 problems at the Vogtle plant, looking at the frequency
8 of inspections, the kind of visual inspection. So it
9 is not just, well, this is just an inspection regime
10 that they need to develop.

11 In the FSAR, in this Chapter 6, what they
12 are relying on as a basis for their inspection program
13 is not enough. It is -- the visual inspection is not
14 enough, given that plant, given the way that it is
15 proposed to be designed, proposed to be operated,
16 access problems in the cold, dark hole, looking for
17 tiny cracks and holes, is not good enough.

18 And, you know, in looking at the kind of,
19 you know, zinc coating that is being put on that, when
20 it is put on, when it is being proposed to be placed
21 in -- at the Vogtle plant, and how often, those kind
22 of things that are actually in the Vogtle COLA, don't
23 address the issue properly.

24 And that's a technical matter. I mean, I
25 have gone way past my expertise on this. I am just

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1 mouthing somebody else's work.

2 JUDGE TRIKOUROS: Well, it is not a
3 technical matter in the sense that it -- those in fact
4 are all of the existing NRC standards, reference
5 standards. So everything that -- everything that he
6 is referring to is the current regulatory requirement.
7 And he is saying that it is inadequate, and that is
8 really what you have just told me. That is what his
9 report says, as I read it.

10 He is questioning the current -- the
11 adequacy of the current regulations. And it sounds
12 like that you agree with that -- I mean, that you're
13 saying that.

14 MR. RUNKLE: Well, the -- I mean, they are
15 relying in the COLA on meeting these ASTM various
16 standards. There are other kinds of inspections that
17 would also meet those standards that they are not
18 doing. I mean, there are certainly electronic kind of
19 -- that you could do fairly frequently and be able to
20 find cracks before they get to the point where they
21 cause this exceptionally grave situation.

22 And, I mean, and I think -- I think that
23 this exceptionally grave situation is -- I think goes
24 to really the -- really the core of what we have here.
25 This is your job. I mean, this is why this Licensing

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1 Board was established is to look at these issues.

2 And, yes, I guess -- I guess if somebody
3 would have brought them back in -- you know, in this
4 petition in 2008, or if somebody would have done it
5 for Harris or, you know, any one of the other AP1000s,
6 it may have been addressed by now.

7 But once we in the broad term, in the
8 public groups, discovered that this was a problem, in
9 good faith we brought it to the Commission in the way
10 that we could, went directly to the Chairman, went
11 directly to the ACRS and said, "This is a problem.
12 How are we going to deal with this?"

13 We're not -- we didn't wait until, you
14 know, a couple of years down the line when they are
15 still -- when the staff is still reviewing the DCDs
16 and trying to make final approval. As soon as the
17 analysis was done, it was brought in good faith to the
18 NRC.

19 And in the presentation to the ACRS,
20 Chairman Ray agreed with that. He said some of --
21 this is a serious issue. We haven't addressed it yet.
22 You know, the ACRS will have some more meetings on
23 this. In the part of the DCD review there would be
24 some more on this. But on looking at, you know, the
25 Vogtle COLA, I think this issue is very relevant. And

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1 it raises to the level of being on that one end of the
2 continuum where you all have to address it.

3 And we have to address it because it is
4 exceptionally grave, and it is -- you know, there are
5 technical aspects to it that in two hours this morning
6 we can't address. Certainly, the other parties
7 haven't put any technical, you know, countervailing
8 arguments. The only technical expert opinion we have
9 in the record in front of us is Mr. Gundersen's report
10 supported by his analysis.

11 That is -- you know, even given the same
12 design, if there was a different operator or if the
13 same design was being used at other proposed plants,
14 had different operators, different inspection and
15 maintenance regimes, used different zinc coatings, you
16 know, highlighted this issue, I think the same issue
17 probably could be raised at a number of other
18 reactors.

19 But I think at this point in time the
20 Vogtle reactor is in play. Looking at all of the
21 other AP1000 reactors in the southeast and with the
22 other ones, they are all being put off, they are all
23 being put back. Even the reference Bellefonte COLA is
24 being put back. These issues have to be addressed as
25 soon as we can address them and get them

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1 satisfactorily resolved before the Vogtle plant goes
2 forward.

3 CHAIRMAN BOLLWERK: All right. Anything
4 further you have at this point? You have a little bit
5 of time left on your direct if you are --

6 MR. RUNKLE: Let's use it on rebuttal.

7 CHAIRMAN BOLLWERK: Okay.

8 MR. RUNKLE: Can I do that?

9 CHAIRMAN BOLLWERK: Let me ask you one
10 quick -- do you have anything you want to say about
11 the question about the motion for leave to file the
12 reply pleading late that was objected to by the
13 Applicant? If there is nothing you wish to say at
14 this point, you can certainly wait until rebuttal.
15 That's --

16 MR. RUNKLE: In looking at the rules, I
17 mean, there -- there are, you know, on the procedures,
18 and the Chapter 2 procedures of -- I mean, there are
19 probably things that another attorney should have had
20 in a proper, timely fashion.

21 But I must go back to this -- no matter,
22 you know, if it's -- if it's procedurally, and we've
23 got a couple of weeks late, or, you know, several days
24 late, because it -- the issue is so exceptionally
25 grave, it is such a potential serious problem and a,

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1 you know, significant impact on public health and
2 safety, then I think that is -- that balances out
3 everything else and whether things are timeliness or
4 not.

5 And because it appears -- I mean, just in
6 the last couple of weeks it appears that the Vogtle
7 COLA may be the new reference COLA, because it may be
8 the only one still in play. It becomes much more
9 important to resolve these fundamental issues that
10 have such a significant impact now in the Vogtle as
11 opposed to waiting several years down the line to try
12 to say, "Well, the DCD looked at this, but we didn't
13 really look at how the Vogtle operators were going to
14 deal with the matter."

15 CHAIRMAN BOLLWERK: All right.

16 MR. RUNKLE: Spend our time on rebuttal if
17 we could.

18 CHAIRMAN BOLLWERK: All right. Judge
19 Trikouros, do you have anything else?

20 JUDGE TRIKOUROS: I do, but not -- I will
21 bring them up later in the proceeding.

22 CHAIRMAN BOLLWERK: All right. Basically,
23 the question is in terms of what we posed on the
24 September 6th order. Basically, you have asked him
25 anything you need to ask him about it then.

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1 JUDGE TRIKOUROS: Not right now.

2 CHAIRMAN BOLLWERK: Okay. Judge Jackson,
3 do you have anything further?

4 JUDGE JACKSON: Yes, I would like to ask
5 a question.

6 CHAIRMAN BOLLWERK: Yes, sir.

7 JUDGE JACKSON: It relates to the issue of
8 graveness. And I'm trying to understand the basis for
9 some of the information that was in the contention and
10 the supporting documents. On the fifth page of the
11 contention it states that, "Mr. Gundersen's
12 declaration demonstrates that inadequacies in SNC's
13 proposed inspection regime pose a high likelihood of
14 causing a release well in excess of the regulatory
15 threshold."

16 So in this -- in the contention it refers
17 basically to Mr. Gundersen's declaration. And in
18 reading the declaration, it in turn refers to the
19 Fairewinds report, and we had a series of references
20 without real page/section citations. So I wasn't sure
21 exactly what the basis for the statement was, but I
22 looked in the Fairewinds report and could perhaps ask
23 a couple of questions as to what was done.

24 I'm not trying to discuss the merits, just
25 trying to understand what was done in the analysis

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1 that is behind the statement that there is a high
2 likelihood that releases following an accident could
3 exceed the regulatory threshold. An example --

4 CHAIRMAN BOLLWERK: Judge Jackson, you're
5 breaking up a little bit. Could you pick up your
6 headset maybe, your handset rather?

7 JUDGE JACKSON: Okay. Is this better?

8 CHAIRMAN BOLLWERK: A little bit I think,
9 yes.

10 JUDGE JACKSON: All right. If you have
11 trouble hearing me, please let me know and I'll --

12 CHAIRMAN BOLLWERK: Okay.

13 JUDGE JACKSON: -- try to repeat my
14 question. If we look at, say, pages -- page 18 of the
15 Fairewinds report, that is Section 327, if people
16 could find that or would like to, it says, "Based upon
17 my experience in integrated leak-based testing, the
18 industry expectation is that a quarter-inch hole in
19 the containment will produce leakage in excess of 100
20 standard cubic feet per hour, resulting in an offsite
21 exposure of approximately 25 rem at the low population
22 zone."

23 To help me understand the basis for this,
24 were any of the -- basically, let me ask it this way.
25 What radiological source term and post-accident in-

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1 vessel pressure history was used to get this 25 rem
2 evaluation? What accident pipe was it? Did it
3 actually use AP1000 data in terms of the source term
4 and pressure history for any of the accidents? First
5 question.

6 MR. RUNKLE: Judge Jackson, this is John
7 Runkle for the Joint Intervenors. My understanding is
8 that Mr. Gundersen did look at the source term -- at
9 the proposed -- well, the AP1000 reactors, and looking
10 at how much -- what kind of pressure buildup would be
11 within the containment and given the size of a
12 through-hole in the containment how much radioactivity
13 would be vented out unfiltered into the atmosphere.

14 I don't have his work notes on that, so I
15 can't tell you what actually -- what those figures
16 were, but that's my understanding of what he -- he
17 looked at the AP1000 design.

18 JUDGE JACKSON: Okay. Could you tell me
19 in his submission where it discusses that?

20 MR. RUNKLE: Sir, I -- Judge Jackson, in
21 looking at Mr. Gundersen's report, looking at page 26,
22 he talks about the scenarios of if there was a -- if
23 there was a severe accident and different kinds of
24 things. And I don't see the specific information that
25 you are requesting. Again, my understanding was in

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1 the work notes that this was done with the AP1000, but
2 I don't have them in front of me.

3 JUDGE JACKSON: All right. Thank you. I
4 guess in a similar vein, in pages 11 through 13, it
5 refers to some work reported from another source. And
6 I had a similar question. It was not clear to me that
7 in that source as well that they had used any design
8 or other information from the AP1000 accident
9 analyses. Do you know if the references in pages 11
10 and 13 -- 11 through 13 considered specific AP1000
11 information or not?

12 MR. RUNKLE: Sir, my understanding is that
13 the -- Dr. Petrangeli's study did not look
14 specifically at the AP1000, but was generally looking
15 at both the BWRs and the PWRs. But that was as part
16 of Mr. Gundersen's analysis that he -- he looked at,
17 you know, those kinds of pressure buildups for those
18 kind of reactors and used that to make his conclusion.

19 I don't think there is -- I don't think
20 there is anything that -- you know, as specific as you
21 need to have it in his report.

22 JUDGE JACKSON: All right. Thank you, Mr.
23 Runkle.

24 MR. RUNKLE: Thank you, sir.

25 CHAIRMAN BOLLWERK: Yes. Judge Trikouros

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1 has a question.

2 JUDGE JACKSON: Those are my questions for
3 now.

4 JUDGE TRIKOUROS: Since we started down
5 this path, I will ask a question that I was going to
6 ask later, because it is important to understand the
7 gravity issue. Again, the -- in the ACRS
8 presentation, which Mr. Gundersen, and I believe, Mr.
9 Runkle, you were also --

10 MR. RUNKLE: Yes, sir.

11 JUDGE TRIKOUROS: -- there as well,
12 Slide 23 of that presentation which you provided as
13 exhibit -- one of the exhibits with your contention,
14 it was -- you concluded in that slide that the AP1000
15 SAMDA analysis does not assume a containment breach
16 concurrent with the initiating LOCA.

17 I looked at that and I tried to understand
18 that. I mean, clearly that says that when you do a
19 LOCA analysis you don't assume a breach, which is
20 correct. But the analyses in the SAMDA are severe
21 accidents, not normal LOCAs. If you look at the --
22 the SAMDA is in Appendix 1B of the DCD. I believe
23 it's -- I got that reference from one of your
24 documents.

25 CHAIRMAN BOLLWERK: Can we define the word

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1 "SAMDA," I mean, the acronym? Severe Accident
2 Mitigation Design Alternatives.

3 JUDGE TRIKOUROS: Right, right.

4 MR. RUNKLE: Yes, sir.

5 JUDGE TRIKOUROS: And Appendix 1B of the
6 DCD references the release categories that are in
7 Chapter 45 of the AP1000 PRA. The doses for that I
8 believe are in Chapter 49 of the PRA, AP1000 PRA.

9 And basically all of the release
10 categories -- and I think I could say that the word
11 "all" applies. They either assume a complete
12 containment failure or a release into the auxiliary
13 building which does have secondary containment,
14 because, contrary to what you have indicated, the
15 AP1000 does in fact have secondary containment control
16 for certain portions of it. And that would involve
17 the penetration areas going into the auxiliary
18 building, or it would be a release by virtue of full
19 containment venting.

20 Now, containment failure, containment
21 venting, is basically bypassing the containment. So
22 a one-inch hole in the containment is not very
23 significant with respect to bypassing the containment.
24 So I didn't understand why one could say that, or even
25 imply, that the SAMDA would be worse if there were a

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1 one-inch hole in the containment when in fact all of
2 the release categories assume a total containment
3 failure. It is just simply not there, in essence.

4 So, and again, you use the argument to
5 explain the gravity of the situation. I don't see the
6 gravity there. I see a drop in the ocean, so to
7 speak. So maybe you can explain that or --

8 MR. RUNKLE: In his report and affidavit,
9 and in the presentation to ACRS, Mr. Gundersen was
10 arguing that, given the AP1000 design, this kind of
11 event should be a design basis event. It probably
12 would be likely enough that it should be dealt with
13 directly and not under the full SAMDA.

14 Certainly, he thinks that, you know, under
15 the SAMDA analysis, you know, it should be -- this is
16 a strong possibility that could happen. But as a
17 design basis for the AP1000, that is the real concern.

18 And under -- I think under design basis
19 event, the Applicant would need to deal with that
20 directly and be able to, you know, show that they are
21 -- that their inspection regime and the amount of
22 coatings that they use and be able to deal with that
23 is something that, you know, is dealt with, rather
24 than looking at just the ultimate accident of
25 everything being released, just --

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1 JUDGE TRIKOUROS: With respect to the
2 design basis -- and, again, I'm not trying to -- to
3 provide very difficult technical questions, I think.
4 I'm trying to give sort of cursory technical level.
5 The design basis analysis for the plant, while it is
6 true that it does not assume a hole in the containment
7 of any particular size, it does assume that half a
8 percent of the total weight of material inside the
9 containment gets released every day.

10 Now, I offhand could not correlate that to
11 a particular size hole, but clearly it would be a hole
12 of some sort of a failure of the containment, and that
13 is the assumption.

14 So, again, trying to understand the
15 gravity of this, a one-inch hole that might have been
16 discovered in some plant somewhere, for all I know
17 that one-inch hole under design basis LOCA conditions,
18 while it might -- it might be worse than the design
19 basis results, the COLA design basis results, I don't
20 know that it is exceptionally grave by any stretch.
21 So that is the problem that I'm having.

22 MR. RUNKLE: I understand that. I mean,
23 I can only go back to what Mr. Gundersen has said in
24 his presentation and in his affidavit and his support
25 for that. His analysis showed that Westinghouse

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1 considers an intact containment to be within the
2 design basis of the containment.

3 So they are not looking at, you know, the
4 many different kind of scenarios where there could be
5 -- where the containment would not be intact. And
6 whether that is -- you know, I think the SAMDA
7 analysis is such -- to such an extreme where
8 everything dumps out. I think that it's a much more
9 frequent occurrence that, you know, looking at this as
10 a design flaw.

11 Now, this may be a -- you know, this flaw
12 may be pernicious, and it may be something that is,
13 you know, such a design flaw that the -- we need to
14 deal with everything in the DCD process. But looking
15 at -- I think we just need to go back to how -- how
16 the applicants at Vogtle are going to handle this.

17 JUDGE TRIKOUROS: But I will say, again,
18 the definition of an intact containment means that if
19 the applicant performed an integrated leak rate test
20 it would result in a release of -- at pressure now, it
21 would result in a release of less than -- I believe
22 the technical specifications for the AP1000 are half
23 a percent of the containment by weight, the material
24 in the containment by weight per day.

25 That is the definition of an intact

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1 containment. It's not containment that is, you know,
2 totally and completely, you know, tight. And the
3 doses associated with that assume that, so --

4 CHAIRMAN BOLLWERK: All right. Anything
5 further? Judge Jackson, anything further?

6 JUDGE JACKSON: I have just one small
7 followup question that relates to the discussion that
8 was just taking place. An example would be on page 7
9 of the report, Fairewinds report that was submitted.
10 Near the top of that page, in referring to a report
11 that looked at corrosion in containment, the report,
12 therefore, also uncovered complete containment system
13 failures of either the liner or the steel containment
14 shell.

15 I'd like to ask, what constitutes a
16 complete containment system failure? Would a small
17 crack or a small hole be a complete containment system
18 failure?

19 MR. RUNKLE: Judge Jackson, John Runkle.
20 You know, I can't answer that question. I mean, I
21 have in front of me what the conclusions of that --
22 the table are. In looking at detection of aging
23 nuclear powerplant structures, it doesn't -- in Mr.
24 Gundersen's report, it doesn't say whether that is --
25 what a complete containment system failure is, whether

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1 it's a through-hole crack or whether it is complete
2 venting of all radioactive material within it. So it
3 is not clear from that -- you know, that citation what
4 that actually means.

5 JUDGE JACKSON: Okay. It seems to me that
6 a small crack or a small hole still offers
7 considerable resistance to the flow of material out of
8 the containment structure in a post-accident
9 environment. So I didn't know if in this -- in this
10 report that would be termed a complete containment
11 system failure or not.

12 MR. RUNKLE: Well, in terms of a through-
13 hole in the containment, because of the pressurized
14 and the chimney effect of the AP1000 design, that is
15 -- that is how Mr. Gundersen came up with the numbers
16 of how much radioactivity was being released into the
17 environment.

18 And so it was based probably on a certain
19 size crack that was found at the other reactors,
20 whatever the pressurized pressure would be and how
21 much would be released. So it is -- in terms of, you
22 know, it is not a complete -- the containment for that
23 crack and hole is -- that would be a containment
24 failure.

25 JUDGE JACKSON: Are you saying that a

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1 small crack or a small hole would be a complete
2 containment failure?

3 MR. RUNKLE: Again, I'm not sure what the
4 definition used in that -- in that table was, whether
5 it's a complete system failure. But it certainly is
6 -- it raises above the half a percent of total mass
7 per day that was -- that is used under an intact
8 containment.

9 JUDGE JACKSON: Okay. Thank you.

10 CHAIRMAN BOLLWERK: All right. Anything
11 further, Judge Jackson? Judge Trikouros?

12 JUDGE JACKSON: That's it for now.

13 CHAIRMAN BOLLWERK: All right. All right.
14 We have been going over -- I think that concludes your
15 direct presentation?

16 MR. RUNKLE: Yes, sir.

17 CHAIRMAN BOLLWERK: All right. We have
18 been going a little over an hour and a half, well,
19 nearly an hour and a half now. Let's go ahead and
20 take a break before we start with the staff and the
21 Applicant responses. And let's come back at about
22 10:30, please, and start again.

23 Thank you.

24 (Whereupon, the proceedings in the
25 foregoing matter went off the record at

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1 10:21 a.m. and went back on the record at
2 10:33 a.m.)

3 CHAIRMAN BOLLWERK: Let's go ahead and go
4 back on the record, please. We've had a break, and
5 we're back to begin the presentations by the Applicant
6 and the Staff.

7 Let me just mention one procedural point.
8 We did say at the beginning that we were going to have
9 argument by one counsel, and Mr. Zeller provided some
10 information to us. Nobody objected. Generally, we do
11 want to have one person speaking. Having said that,
12 I don't think there was anything that was done
13 irreparable to the record, or to the procedures we set
14 out. So, we got the information we need, and we
15 appreciate the information from Mr. Zeller. And if
16 any one of the other parties needs some latitude in
17 that regard, we'll do the same thing for them.

18 MR. BLANTON: Your Honor, I'm not sure I
19 remember what the information Mr. Zeller provided was.

20 CHAIRMAN BOLLWERK: He answered several
21 questions that Judge Jackson had.

22 MR. BLANTON: Okay.

23 CHAIRMAN BOLLWERK: All right. But, again,
24 I didn't hear any objections from anybody, so we --

25 MR. BLANTON: We don't have an objection.

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1 CHAIRMAN BOLLWERK: Right. Okay. All
2 right. Let's turn to, I guess does the Applicant want
3 to make a presentation first?

4 MR. BLANTON: Yes, Your Honor. I think the
5 Applicant and the Staff have agreed to split our hour
6 30 minutes apiece.

7 CHAIRMAN BOLLWERK: All right.

8 MR. BLANTON: As the discussion over the
9 last hour indicates, there are a number of fatal
10 problems with this contention that prevent its
11 admission, none of which have anything to do with the
12 Applicant's or the Staff's disagreement with the
13 merits of the contention.

14 To begin with, Judge Bollwerk, as you
15 pointed out in your opening comments, this proceeding
16 was -- the contested part of this proceeding was
17 closed and terminated last May, and certainly in June
18 when the time for appeal of the Board's order on the
19 Low-Level Rad Waste contention past, which means as
20 the proposed Intervenor seem to agree, that the
21 reopening standards of 2.326 apply. Those have been
22 described by the Commission as extremely strict,
23 demanding standards that are not to be brushed aside.
24 And, frankly, the Joint Intervenor failed to even
25 address them in their initial motion, and address them

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1 in only the most perfunctory way in their reply. And
2 while we, in answer to one of the Board's questions,
3 will go into that in more detail, particularly with
4 respect to the Dominion Millstone case, we think as an
5 initial matter, the Intervenors have failed to satisfy
6 those 2.326 standards.

7 One of the main reasons they failed to
8 satisfy those standards, that this contention is
9 clearly untimely. The ACRS, I think as Judge
10 Trikouros has already pointed out, the ACRS does not
11 define the scope of this COLA proceeding, or the DCD
12 proceeding. The statement that Chairman Ray of the
13 AP1000 Subcommittee made that the Intervenors, or
14 proposed Intervenors say their timeliness argument
15 hinges on, and that's the word in their brief, that it
16 hinges on Chairman Ray's statement. Well, simply an
17 observation that inspection programs are province of
18 the COLA, and design issues are province of the DCD.
19 And he said nothing more, or nothing less, and that
20 was not new information. Anybody who had read the COLA
21 as it is proposed Intervenors burden to do back in
22 2008 when it was submitted would have known that
23 containment coatings inspection programs were a COLA
24 issue. And this contention could have been brought at
25 that time, but was not.

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1 Next, as we've both pointed out, the --
2 and as we just briefly addressed in the Intervenor's
3 opening argument, because this proceeding was
4 terminated, the proposed Intervenor's have the burden
5 of demonstrating their standing again. We recognize
6 that they were found to have standing in the prior
7 proceeding. This is a new proceeding. And NRC case
8 law makes clear they are required to establish
9 standing again. And as the cases, the more recent
10 cases that the Board has pointed out in its series of
11 questions show, and we'll talk about that in a little
12 more detail in a second, that is not a -- just a
13 formality. They are required to provide information
14 from the people, the organization seeks to represent,
15 not just an affidavit from the organization to
16 demonstrate that they have a protectable interest in
17 this proceeding.

18 Next, this is, and I think as also the
19 previous discussion emphasizes, fundamentally a
20 design-related contention. The Intervenor's problem
21 is with the inspectability of the AP1000 design, not
22 the inspection program described in the COLA. And the
23 discussion we've just had emphasizes that with the
24 amount of discussion we had on the accessibility of
25 the design. That's a DCD issue.

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1 To the extent the Intervenors have tried
2 to shoehorn a COLA issue into this contention, they've
3 done so by attacking an NRC regulation, as Judge
4 Trikouros has observed. The ASME Section 11
5 Containment Inspection Standards are required by 10
6 CFR 50.55A, and there's a very clear statement in Mr.
7 Gundersen's affidavit purporting to support the
8 contention that that standard is inadequate. And that
9 is the basis of their challenge to the inspection
10 program proposed in the COLA.

11 They can't challenge an NRC regulation in
12 this proceeding. There's no relief that can be
13 granted to them in an individual licensing proceeding
14 for a disagreement with the extent of NRC requirements
15 or standards.

16 The only criticism of the coatings
17 inspections, and they are, again, described in the
18 COLA, are that the ASTN standards are inadequate
19 without really saying why they're inadequate. Those
20 ASTN standards, again, have been adopted in Reg Guide
21 1.54, and are applicable to operating reactors, and to
22 the AP1000, and have been cited in the DCD. So, even
23 then the design of the DCD is based on its
24 inspectability under that Reg Guide 1.54 standard.

25 Now, to get to the Board's specific

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1 questions, I think we can make just about all the
2 points that we need to make in the course of answering
3 the Board's questions. Briefly, the reply was clearly
4 filed out of time. They moved for permission to file
5 the reply out of time. The Bellefonte case that the
6 Board cites in its questions emphasizes that those
7 kind of motions should only be granted in
8 extraordinary circumstances, and we don't feel like
9 that the proposed Intervenors have shown what the
10 circumstances were, much less that they were
11 extraordinary.

12 We all know that the original counsel
13 withdrew on the day that the reply was due. We don't
14 know why. We don't if the Intervenors supported the
15 lawyer's needs for information with respect to filing
16 a reply, but we do know that even the affidavits that
17 they have filed in connection with trying to
18 demonstrate standing are all dated a day or two before
19 their motion for leave to file a reply was dated.
20 None of them were completed as of the day the original
21 reply was due. We think under those circumstances they
22 have failed to satisfy the extraordinary circumstances
23 requirement in the Bellefonte case.

24 CHAIRMAN BOLLWERK: Doesn't that suggest,
25 the scenario you just laid out, that, in fact, the

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1 Intervenor were surprised by the fact their counsel
2 hadn't done anything, essentially, and kind of left
3 them in the lurch, as it were?

4 MR. BLANTON: Judge, I don't know. I
5 assume that's a plausible explanation, but we just
6 don't know, I mean, because nothing they've filed has
7 told us that.

8 With respect to standing, certainly, the
9 cases cited in the Board's questions support SNC's
10 argument regarding standing. Each case demonstrates
11 in different ways that the requirement to demonstrate
12 standing is more than just a formality that can be
13 satisfied with a form affidavit from the Executive
14 Director of the organization seeking to represent
15 others. The individuals being represented need to
16 show that the organization represents that person. I
17 think if you look at the SCANA Summer case, it stands
18 for that proposition.

19 The affidavits from the Executive Director
20 don't demonstrate that the affidavits filed in the
21 previous proceeding still apply, because you would
22 need affidavits from those -- something from those
23 individuals that they still live in the area, that
24 they are still interested in this proceeding,
25 something other than just a form affidavit from the

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1 Executive Director.

2 Finally, the SCANA decision that the Board
3 referred to suggests that the addition of the
4 affidavits to the reply brief, when standing was not
5 even addressed in the initial motion, make those
6 affidavits outside the scope of the reply, because the
7 SCANA case talks about the ability to, I guess, refine
8 or fill-in the gaps, maybe, in an affidavit that was
9 submitted originally to demonstrate standing in an
10 original petition, but not to address standing in the
11 first instance in the reply brief.

12 CHAIRMAN BOLLWERK: I take it you're saying
13 then that in a certification by an organization that
14 nothing has changed relative to what they filed
15 earlier isn't sufficient.

16 MR. BLANTON: That's what I'm saying, Your
17 Honor.

18 CHAIRMAN BOLLWERK: Okay.

19 MR. BLANTON: The Board's third question
20 deals with the reopening standards of 2.326, and,
21 particularly, the relevance of the Dominion Millstone
22 case. The Intervenors, or proposed Intervenors have
23 agreed that those standards apply, but I do want to
24 address that case for just a second, because in many
25 ways, that case is very similar to this case. In both

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1 cases, the Intervenors had had a petition denied in
2 that case, but this case they didn't appeal it. In
3 that case, it was pending appeal when the new untimely
4 contention was filed. And in both cases, the proposed
5 Intervenors failed to address the 2.326 standards,
6 which has certainly happened, or at least in the
7 initial motion here.

8 The Board in the Millstone case addressed
9 the timeliness question, and that contention, which
10 involved a power uprate application, and the
11 contention was that temperaturespikes in the hot leg
12 of the reactor created a safety issue that was
13 relevant to the power uprate decision.

14 The Board addressed the reopening
15 standards in that decision, excuse me, the Commission
16 addressed the reopening standards, notwithstanding the
17 proposed Intervenors' failure to do so, and found that
18 because the information in question was in the COLA,
19 and the COLA had been submitted, excuse me, the power
20 uprate application, because the power uprate
21 application had been submitted months or years in the
22 past, that the contention, or the motion to reopen and
23 the contention was untimely. And that, therefore, the
24 Intervenor failed to satisfy the timeliness
25 requirement in 2.326.

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1 It also addressed the exceptionally grave
2 circumstances exception to the timeliness requirement
3 in 2.326, and said that nothing in the application, or
4 nothing in the contention, and nothing in the showing
5 that the Intervenor made demonstrated any
6 exceptionally grave circumstance. And I need to stop
7 -- pause there for a minute, and talk a little bit
8 about what is an exceptionally grave circumstance.

9 In the rulemaking adopting 2.326, the
10 Commission stated in issuing, or creating that
11 exception that it anticipated that this exception will
12 be granted rarely, and only in truly extraordinary
13 circumstances. As we see in the Dominion case, the
14 issue of temperature spikes in the hot leg of the
15 reactor, which certainly creates the threat of
16 imminent harm to a greater extent than the proposed
17 Intervenor's in this case concerns about a containment
18 inspection program was not an exceptionally grave
19 circumstances.

20 Other cases that the Commission has
21 decided, and that are cited in our answer show that in
22 order for a circumstance to be "exceptionally grave,"
23 and remember, we're not talking about grave, we're not
24 talking about a safety significant issue, we're
25 talking about an exceptionally grave circumstance,

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1 that there must be some threat of imminent harm or
2 danger. And that's just not even proposed or alleged
3 in this case. What we're talking about is a long-term
4 inspection and maintenance issue that is -- and the
5 support for their contention is a list of anecdotal
6 examples of plants that have discovered some degree or
7 another of containment corrosion, and are managing
8 that, and continuing to operate. So, the idea that
9 what we have here is an exceptionally grave
10 circumstance just is far off the mark.

11 CHAIRMAN BOLLWERK: Let me interpose a
12 question here.

13 MR. BLANTON: Yes, sir.

14 CHAIRMAN BOLLWERK: We raised a question in
15 that regard about whether exceptionally grave
16 circumstances, if it is found to be that case, really
17 trumps all the other timeliness filings that are
18 required under 309(c) and (f)(2), 309 (f)(2).
19 Anything you want to say about that? That's the only
20 standard that seems to talk about grave circumstances,
21 and it seems to say if it's really grave, then you
22 need to look at it.

23 MR. BLANTON: There's nothing in 2.309(c)
24 or in 2.309(f)(2) that even discusses the
25 exceptionally grave circumstances requirement, and we

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1 would suggest that that exception does not apply to
2 those provisions. In fact, you'll notice in, I think
3 it's 2.309, I'm terrible at quoting subsections of --
4 but 2.326(d) sends you to 309(c) on a motion to reopen
5 that involves a new contention without any discussion
6 of exceptionally grave circumstances. So, although --
7 now, we recognize that the 2.309(c) standard is a good
8 cause standard, not expressly a timeliness standard,
9 so if the Board wanted to include a consideration of
10 the seriousness of the contention in its consideration
11 of good cause, I suppose it could. There's certainly
12 nothing in the regulation, either in 2.326, or in
13 2.309(c) that would suggest that that's an exception
14 to the timeliness requirement.

15 And all of the cases that address good
16 cause under 2.309(c), as Judge Bollwerk -- I mean,
17 we've had this conversation before, all talk about
18 when the information became available to the proposed
19 Intervenor to file the contention. It is,
20 essentially, a timeliness requirement, which strangely
21 enough brings me to the Board's fourth question, which
22 involves timeliness. And, in particular, the Prairie
23 Island case, which is brand new, and very apt, because
24 in that case, the proposed Intervenor claimed that the
25 FSAR collected, summarized, brought together various

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1 extraneous bits of information that all existed, and
2 were available for review in other sources, other
3 places, but that the collection of those various
4 pieces of information in the FSER prepared by the
5 Staff was "new information," because now it's all in
6 one place. And I now understand it, the lightbulb
7 went off, so now I can file my contention.

8 Well, the Board in the Prairie Island case
9 admitted that contention, and the Commission sua
10 sponte reversed that decision, and said that the
11 collection of that information that was previously
12 available in the FSER did not create any new
13 information upon which a new contention, or a late
14 filed contention could be based. It didn't satisfy
15 the standards of 2.309(c). And the reason it said
16 that was because all of that information was available
17 somewhere else, and that the proposed Intervenor has
18 the burden of reviewing the application, and any other
19 publicly available information, and bringing any
20 contention they have to the Board in a reasonable
21 timely manner. There couldn't be a more applicable
22 case to this situation, where what we have here is an
23 argument on timeliness that says well, yes, we
24 understand that the containment inspection program was
25 described in the FSAR. We understand that the FSAR

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1 was amended back in 2009, and all these ASTM standards
2 were included, but until Chairman Ray told us this was
3 a COLA issue, we didn't know it was a COLA issue.

4 Well, Chairman, as I said in my opening
5 comments, Chairman Ray did not define, or redefine, or
6 change the scope of this COLA proceeding. The
7 inspection programs involving the containment and
8 coatings have always been a COLA issue. They've never
9 been a DCD issue. And Chairman Ray's observation that
10 that was the case is not new information, and it
11 doesn't matter, and Prairie Island makes very clear,
12 it doesn't matter that this - whether or not it was
13 "new information" to the Intervenor. The question is
14 whether it's new information, period. And the fact
15 that the Intervenor just discovered it is irrelevant.

16 CHAIRMAN BOLLWERK: If the Joint
17 Intervenors had filed the Gundersen report along with
18 this contention at the same time they made the
19 submission to the ACRS, would that have been timely?

20 MR. BLANTON: Let me decompose that one a
21 minute, Judge Bollwerk. You mean in June?

22 CHAIRMAN BOLLWERK: In June of 2010 --
23 well, the report is dated April. Let's assume in the
24 April-May time frame, they had filed this contention
25 with the Board the same time they were dealing with

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1 the ACRS, would it have been a timely contention at
2 that point?

3 MR. BLANTON: I think it would have been
4 untimely, because, first of all, the inspection
5 program has been specified in the FSAR since 2008.
6 And the ASME Chapter 11, which is really their only
7 point of contention with our inspection program, has
8 been in the regulations since 2001. And even then,
9 even if you take the amendment to the COLA in 2009, or
10 the revision to the COLA in 2009, a contention, in my
11 judgment, in May of '10 challenging that COLA
12 contention in -- that COLA revision in 2009 would have
13 been untimely.

14 And I guess I ought to make one other
15 point, that there seems to have been a lot of
16 discussion by the proposed Intervenorors that didn't
17 have Mr. Gundersen's affidavit, or his report until
18 April. Well, all of the information that's in Mr.
19 Gundersen's report existed somewhere before Mr.
20 Gundersen wrote his report. I mean, the containment
21 corrosion issues that he points to are not -- were not
22 a secret. They were in the public domain. In fact,
23 he points to several other reports talking about those
24 very same issues. And the Prairie Island case makes
25 very clear that a proposed Intervenor can't sit and

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1 wait with all of his -- with a lot of publicly
2 available information, and then file the contention
3 whenever they want to, and claim well, until we had
4 the affidavit supporting the contention, the
5 information didn't exist. The information upon which
6 the affidavit is based is what's relevant, and all
7 that existed, and was publicly available before Mr.
8 Gundersen wrote his affidavit, certainly before they
9 filed this contention, and certainly the information
10 that's in the COLA relative to the containment and
11 coatings inspection program has been available at
12 least since December of '09.

13 JUDGE TRIKOUROS: Mr. Blanton, this
14 question of whether this subject is a matter of the
15 DCD or the COLA isn't clear. I discussed it some
16 extent earlier with the Joint Intervenors. In your
17 answer to the petition, I believe it's on page 11, you
18 indicate that "The proposed new contention challenges
19 issues that will be resolved in the AP1000 DCD." It's
20 not clear to me what you meant by that, but I know
21 that you meant that it is not a COLA issue. It sounds
22 to me like you're saying it's a DCD issue.

23 MR. BLANTON: Well, there are several
24 things mentioned in the contention and the affidavit,
25 some of which I think are allegations that the design

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1 is deficient in some fashion, some of which are
2 allegations that the NRC's inspection requirements are
3 not adequate. There is nothing that says the COLA
4 fails to satisfy the NRC's inspection requirements.
5 So, to that extent, I think they fall -- the
6 allegations in the contention fall in one of two
7 buckets, one is that this design is not inspectable,
8 or is not sufficiently accessible, or that it fails to
9 satisfy general design criterion, which is one of the
10 things that the contention says we fail to meet, or
11 that it -- they take issue with the site boundary
12 dose, which is a calculation, as you pointed out
13 earlier, Judge Trikouros, is in the DCD. It either
14 falls in that bucket, or it falls in the bucket that
15 because of those aspects of the design, the NRC's
16 inspection standards are inadequate.

17 Well, neither of those support any
18 allegation that the COLA is deficient. And neither of
19 those allegations support a contention that is
20 admissible in this proceeding, especially when you
21 consider the timeliness issue.

22 Now, we do have the Harris case, I'm well
23 aware of the Harris case, and we've argued about that
24 one before in here, too, that a otherwise admissible
25 design contention can be admitted in the COLA

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1 proceeding, and held in abeyance, and then resolved,
2 after it's resolved in the design certification
3 proceeding. That resolution would have finality in
4 the COLA proceeding. I'm well aware of that, and
5 that's still the law, and I agree with that. But the
6 otherwise admissible part of the design-related
7 contention is what's lacking here.

8 I mean, the contention would still have to
9 be admissible. It would still have to be supported by
10 an affidavit that is more than some vague, general
11 allegation that the design is inadequate. And here,
12 we don't have that here.

13 So, I hope I'm answering your question,
14 Judge. I don't think it's a COLA contention. I think
15 it's either a design contention in some aspects, or a
16 challenge to NRC rules and other aspects, neither of
17 which are an admissible COLA contention.

18 JUDGE TRIKOUROS: What did you mean by
19 "will be resolved in the DCD?"

20 MR. BLANTON: Well, I think that the DCD,
21 the Design Certification review is still ongoing. So,
22 they're having ACRS meetings almost as we speak. The
23 rulemaking, the proposed rulemaking will be out early
24 next year. I better not start trying to remember
25 dates, but it'll be out early next year. There will

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1 be a final rulemaking later on in 2011, hopefully.
2 Late September 2011 was the last date I've heard.
3 When that rulemaking comes out, all design-related
4 issues involving the AP1000 will be decided and final
5 for the purpose of this proceeding.

6 JUDGE TRIKOUROS: But the truth is that the
7 inspection program that you indicate was available in
8 2008 in the COLA, or the discussion of the inspection
9 program that was available in the COLA in 2008, is
10 really nothing more than a statement that there will
11 be an inspection program, and that that inspection
12 program will be available, I believe the words are
13 "prior to fuel load," as I mentioned earlier. So,
14 there is no inspection program to review. The DCD
15 will be issued in advance of that time when there will
16 be an inspection program. So, where does that put us?

17 MR. BLANTON: Well, the COLA -- the FSAR
18 requirement is for the Applicant to describe the
19 inspection program. There is a description, there's
20 a commitment, Chapter 6 of the COLA, that there will
21 be a containment and coatings inspection program. It
22 describes the standards that that program will comply
23 with. And it stands for the proposition, but you'll
24 forgive me for that, including ASME Chapter 11, which
25 is an extremely prescriptive chapter for containment

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1 inspections. It tells you what to do, and when to do
2 it. And to say that my containment Section 11 of the
3 ASME code, saying that you're going to comply with
4 Section 11 of the ASME code provides a fairly thorough
5 description of the inspection program that you are
6 going to pursue. It also says it's going to comply
7 with these ASTM standards that are in Reg Guide 1.54,
8 so I think the description of that program from a
9 functional standpoint and purpose, and the purpose of
10 the program is in the FSAR in compliance with the
11 rules.

12 As you know, and we'll get to that in a --
13 or we can get to it now, if you want to. As you know,
14 in the early part of this decade, 2002 and 2004, the
15 Commission issued a couple of SRMs regarding ITAAC for
16 programs, and the degree to which programs need to be
17 described in the COLA in order to satisfy regulatory
18 requirements. And in both of those cases, the
19 Commission said other than for emergency planning,
20 ITAAC for in-service inspection programs are not
21 appropriate, that ITAACs should be focused on the as-
22 built construction of the plant. So, when the Staff
23 came back after that initial rejection for a
24 programmatic ITAAC by the Commission, they came back
25 and said okay, we need to have certain programs

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1 described at a procedural level. And the Commission
2 said no to that, also, and that's in SRM 04-32, I do
3 believe, if memory serves. SRM 04-32, the Commission
4 said you have to describe the program functionally,
5 but you're not required to -- the Applicant is not
6 required to describe the program at a procedural
7 level. I think if we did any more than what we're
8 doing, what we've done, that's where we would be, is
9 trying to describe the program at a procedural level.

10 JUDGE TRIKOUROS: A bit of a dilemma, but
11 the program, itself, clearly, just because an
12 Applicant says they're going to meet 15 standards
13 doesn't mean that when they write the inspection
14 program, that it will meet the 15 standards. I mean,
15 clearly --

16 MR. BLANTON: There's no question that's
17 correct, Your Honor, but you also have the NRC's
18 inspection and enforcement program to rely on to
19 insure that that program does meet those standards,
20 and that's what the Commission relies on in order to
21 insure that operational programs satisfy NRC
22 requirements.

23 JUDGE TRIKOUROS: And the Joint Intervenors
24 would have no place in that decision making review
25 area?

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1 MR. BLANTON: Not in the inspection and
2 enforcement space. I suppose they could file a 2.206
3 petition if they thought we were violating an NRC
4 regulation.

5 JUDGE TRIKOUROS: So, you're saying that
6 the inspection program available prior to fuel loading
7 falls under the inspection and enforcement aspect?

8 MR. BLANTON: Yes, sir.

9 JUDGE TRIKOUROS: Not the licensing --

10 MR. BLANTON: Correct.

11 JUDGE TRIKOUROS: The basis for that is?

12 MR. BLANTON: Is this SRM I referred to,
13 SRM 04-32.

14 CHAIRMAN BOLLWERK: All right. You can ask
15 the Staff about it when we get there.

16 MR. BLANTON: All right. Just to continue,
17 I'm not sure how I stand on time, Judge Bollwerk.

18 CHAIRMAN BOLLWERK: You're getting pretty
19 close.

20 MR. BLANTON: I'm going to --

21 CHAIRMAN BOLLWERK: We've asked you a lot
22 of questions, so we'll give you a little latitude
23 here.

24 MR. BLANTON: I'm going to go into rapid
25 talk mode.

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1 CHAIRMAN BOLLWERK: Okay.

2 MR. BLANTON: If I get going too fast, tell
3 me.

4 CHAIRMAN BOLLWERK: I also want to give
5 Judge Jackson a chance, in case he's got any
6 questions.

7 MR. BLANTON: Question Five deals with the
8 issue of the anecdotal instances the proposed
9 Intervenors have cited, and their relevance to the
10 AP1000. Obviously, all those plants have different
11 designs, different materials, different coatings. And
12 I think, as Judge Trikouros has correctly observed,
13 questionable applicability of the AP1000.

14 I did want to point out one other thing
15 about those, though, and that is that just about, if
16 not all, of those instances involved plants that had
17 been operating for years, if not decades, before the
18 NRC amended its rules back in 2001 to require ASME
19 Section 11 inspection standards. Prior to that, that
20 requirement didn't exist. So, we don't know whether
21 in the early years of those plants' operation, and
22 really over decades of some of them's operation, what
23 kind of inspection requirements they have. There's
24 certainly nothing in Mr. Gundersen's affidavit --

25 CHAIRMAN BOLLWERK: One second. Judge

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1 Jackson, are you still there? I think we may have
2 lost Judge Jackson.

3 JUDGE JACKSON: I'm still here. I can hear
4 something else.

5 CHAIRMAN BOLLWERK: You're hearing
6 something else. All right. That may be something
7 coming from another source.

8 MR. BLANTON: Did we lose Atlanta?

9 CHAIRMAN BOLLWERK: That may be the case,
10 too. Let's check that, one second. Is the Atlanta
11 video conference still on?

12 ATLANTA: This is Atlanta. We're still
13 here.

14 CHAIRMAN BOLLWERK: All right. We're
15 getting some kind of additional -- I think it stopped.
16 Why don't you go ahead, and if we need to stop, then
17 we will.

18 MR. BLANTON: All right, sir.

19 CHAIRMAN BOLLWERK: Sorry.

20 MR. BLANTON: As I noted, just to rewind a
21 minute, ASME Chapter 11 was only -- or 10 CFR 50.55A
22 was amended in 2001 to add the requirement that
23 containment inspection programs follow ASME Section
24 11. Prior to that, that requirement didn't exist.
25 There's nothing in the affidavit submitted by the

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1 proposed Intervenor to suggest what the inspection
2 programs were for these other instances of containment
3 corrosion prior to that time; whereas, for the AP1000,
4 and particularly for Plant Vogtle, these ASME Section
5 11 standards will apply from day one. So, there's
6 every reason to think for that reason, if not any
7 other, that the examples cited by the proposed
8 Intervenor just aren't applicable to the AP1000.

9 We've discussed, I think, the Board's
10 Question Six, which was whether this is a design or a
11 COL contention. The Board has already had an extended
12 discussion with the proposed Intervenor about the
13 regulatory basis for the fission product release
14 allegation in the contention.

15 I would only add to that, that Reg Guide
16 1.183 provides what the design basis containment leak
17 rate is for a test of site boundary dose. It appears
18 to us that the assumptions made in the affidavit are
19 significantly in excess of that leak rate. And, also,
20 with respect to the question of whether or not this
21 allegation satisfies the extremely grave circumstance
22 requirement, we agree that the analysis in the DCD
23 bounds the leak rate that Mr. Gundersen has alleged,
24 the SAMDA analysis. And I think we've talked about the
25 programmatic ITAAC issue, as well.

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1 The last question is what other forum the
2 proposed Intervenors might raise the concerns that
3 they've raised here, and I would say that based on
4 what their real concern, as far as the COLA seems to
5 be, which is that NRC standards are not adequate, that
6 the appropriate venue for that kind of issue would be
7 a petition for rulemaking to change the standards.
8 It's not appropriate to try to litigate the
9 appropriateness of NRC's requirements in this COLA
10 proceeding.

11 CHAIRMAN BOLLWERK: That about wraps it up
12 for you, I think.

13 MR. BLANTON: I'll be happy to answer any
14 questions.

15 CHAIRMAN BOLLWERK: All right. Let me see.
16 Judge Trikouros, any questions?

17 JUDGE TRIKOUROS: Not right now.

18 CHAIRMAN BOLLWERK: All right. Judge
19 Jackson, do you have any questions?

20 JUDGE JACKSON: I have no questions.

21 CHAIRMAN BOLLWERK: All right. At this
22 point, I don't, as well, so we thank you, sir, for
23 your presentation.

24 MR. BLANTON: Thank you, Your Honor.

25 CHAIRMAN BOLLWERK: And let's turn then to

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1 the NRC Staff.

2 MS. LIAW: Yes, Your Honors. The Staff
3 would just like to note that this petition is
4 inexcusably untimely, and it fails to meet the
5 requirements of 2.309(c). There is nothing new in
6 either the petition, or in the reply, or their
7 supporting documents that constitutes new and material
8 information about the COLA to support their late
9 filing. They should have, and could have raised their
10 challenges in 2008, when the application was initially
11 filed. And any misunderstanding they had about the
12 scope of this proceeding does not give them good cause
13 for their late filing. Thus, this petition must be
14 dismissed.

15 With respect to all other issues, the
16 Staff stands by its answer, and is happy to answer any
17 questions the Board may have.

18 JUDGE TRIKOUROS: Okay. In your answer to
19 the petition on page 15, you say that the issue --
20 that the contention raises issues that were resolved
21 in the certified design, were.

22 MS. LIAW: Yes. That's right, Your Honor.

23 JUDGE TRIKOUROS: Can you explain that?

24 MS. LIAW: Yes, Your Honor. When we stated
25 that in our pleading, we were referring to the fact

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1 that all the containment issues that the petitioners
2 raise in their pleadings were resolved in Revision 15
3 of the AP1000 certified design, which is codified in
4 our regulations, Your Honor.

5 JUDGE TRIKOUROS: So, these issues came up
6 in the Rev 15 rulemaking process. Is that what you're
7 saying?

8 MS. LIAW: Yes, Your Honor, and were
9 resolved in that certified design; and, thus, have
10 finality under 52.63(a)(5).

11 JUDGE TRIKOUROS: And can you give me any
12 specifics? I mean, is that where a requirement for a
13 containment coating program came out of, is that where
14 -- was the containment made thicker? Was there some
15 -- do you remember how they were resolved?

16 MS. LIAW: May I have a moment to just
17 consult with the Staff on that issue?

18 JUDGE TRIKOUROS: Yes.

19 JUDGE JACKSON: This is Judge Jackson. Is
20 the Staff is talking among themselves, you haven't
21 lost us?

22 CHAIRMAN BOLLWERK: Yes.

23 JUDGE JACKSON: Thank you.

24 MS. LIAW: Forgive me, Your Honors. The
25 Staff has just informed me that the issues surrounding

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1 the containment structure were addressed in --

2 JUDGE TRIKOUROS: Ms. Liaw, can you speak
3 directly into the microphone?

4 MS. LIAW: Oh. Can you hear me now? Okay.
5 The Staff has just informed me that the issues
6 surrounding the containment structure were addressed
7 in Chapter 3 of Revision 15 of the DCD.

8 JUDGE TRIKOUROS: You don't remember how
9 they were addressed. They were just addressed in
10 Chapter 3 of the -- of what?

11 MS. LIAW: The general issues surrounding
12 the containment, Your Honor, were addressed in the
13 DCD.

14 JUDGE TRIKOUROS: Is this the SER, Chapter
15 3 of the SER?

16 MS. LIAW: Yes, Your Honor, SER.

17 JUDGE TRIKOUROS: Okay. With respect to
18 this question that we've been discussing regarding the
19 inspection program, which will really not be available
20 until sometime later, specifically, prior to fuel
21 load, how does that fit into this, sort of this big
22 picture that we're painting here regarding the issues
23 that the Joint Intervenors are raising? I guess Mr.
24 Blanton is indicating that that is not part of the
25 licensing process, that it's part of the subsequent

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1 inspection and enforcement process. Can you address
2 that?

3 MS. LIAW: Well, Staff believes that the
4 petitioners in looking at the application when it was
5 initially filed in 2008 had an obligation to raise any
6 issues that they had with the proposed inspection
7 program at that point, and not any later. They're
8 required to follow the timeliness standards in our
9 regulations, Your Honors, and they did not do so.

10 Their recourse here would be to file a
11 petition for rulemaking, since most of their
12 challenges are, in essence, to the certified design,
13 Your Honor.

14 JUDGE TRIKOUROS: But the inspection
15 program -- it's difficult to question a document that
16 doesn't exist, or that exists in the form of I'm going
17 to do a great job.

18 CHAIRMAN BOLLWERK: We'll comply with the
19 regulations.

20 JUDGE TRIKOUROS: Right. Yes. We're going
21 to do a great job.

22 CHAIRMAN BOLLWERK: In theory, they will
23 comply with the regulations, but that isn't quite the
24 way the thing is written.

25 MS. LIAW: Well, under our contention, the

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1 admissibility standards, Your Honor, they must present
2 a genuine dispute with the application at issue here.
3 They haven't presented any genuine dispute with the
4 application, as far as the inspection programs are
5 concerned, and that is their regulatory burden, Your
6 Honors, and they have not met that in their petition,
7 or in their replies.

8 JUDGE TRIKOUROS: Well, I mean, they have
9 expressed a concern about the inspection program.
10 That's the whole basis of the contention. The issue
11 is whether or not the inspection program meets the NRC
12 regulations. Since it doesn't exist, all we have is
13 a statement that it will meet the NRC regulations. If
14 the inspection program existed this moment, or
15 earlier, the Joint Intervenors would have an
16 opportunity to review the inspection program, and
17 identify areas that they feel it doesn't meet the
18 standards and requirements, and that would be a
19 contention, or many contentions. So, the situation as
20 it exists right now is not that way. The inspection
21 program will be developed later, but they have --
22 they're expressing problems with the inspection
23 program right now, and I'm just interested in
24 understanding how that all works. I know there's not
25 a lot of experience with such things.

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1 MS. LIAW: Yes, Your Honor. The
2 petitioners have not explained how the FSAR is
3 inadequate in meeting the regulatory standards under
4 52.79, nor have they sufficiently stated, as they're
5 required to do, why the COLA is deficient in meeting
6 any other regulations, or how these proposed programs
7 are incapable of preventing or finding a hole in the
8 containment structure, Your Honor.

9 JUDGE TRIKOUROS: Well, I mean, they have
10 said things. They've said, number one, that the
11 existing program is resulting in a number of
12 containment failures, so from their point of view, it
13 has problems with existing plants. But they're going
14 further and saying that the AP1000 has some specific
15 features that would test the limits of the current
16 inspection program standards, and they're basing that
17 on the Gundersen report. And Mr. Runkle did
18 specifically indicate that there are more than one way
19 to meet the standards in the sense that one could
20 write an inspection report that looks -- that you
21 could get three different inspection reports and meet
22 the standards, and they're not exactly the same
23 inspection report, so to speak. So, will that
24 inspection, when it comes out, is that -- is there any
25 availability for someone to review that at that point?

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1 MS. LIAW: Well, Staff wouldn't want to
2 speculate on whether a contention could come in if an
3 inspection report were in the future filed on the
4 proposed inspection programs. Regardless, what we have
5 before us here is the petition that we have filed for
6 us by petitioners, and they haven't presented a
7 genuine dispute with the COL application, Your Honor.
8 They haven't shown any dispute as to whether -- they
9 haven't shown why incidents at operating reactors have
10 anything to do with the deficiency or sufficiency of
11 the COLA at this proposed reactor.

12 CHAIRMAN BOLLWERK: Okay.

13 MS. LIAW: Furthermore, inspection reports
14 are publicly available documents, and petitioners are
15 bound under the Commission case law to inspect all
16 publicly available documents, and to formulate
17 contentions on those documents. So, if something were
18 to be issued in the future, they could attempt to file
19 a contention at that point.

20 JUDGE TRIKOUROS: The production of the
21 containment coating inspection report, let's say, is
22 not a license condition, nor an ITAAC. Correct?

23 MS. LIAW: That's correct, Your Honor.

24 CHAIRMAN BOLLWERK: Just so I'm clear, what
25 is the timing of that? I mean, is it -- have we ever

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1 -- and I'll take that answer from either party at this
2 point. There will be something else issued, I take
3 it, that's going to describe the inspection program.
4 Right, or not? I mean, I --

5 JUDGE TRIKOUROS: From what --

6 MR. BLANTON: Yes, Your Honor. I think
7 that's right. During the construction, there will be
8 one inspection program, and then for commercial
9 operation there'll be another inspection program. And
10 that program will be developed by the licensee, and
11 subject to inspection by NRC staff.

12 CHAIRMAN BOLLWERK: But I'm hearing -- as
13 I understand what you're saying then, that both of
14 those programs actually will not be issued or made
15 available, publicly available until after the COL is
16 issued or granted?

17 MR. BLANTON: That's correct.

18 CHAIRMAN BOLLWERK: You say under the
19 current regime, as you described it.

20 MR. BLANTON: Yes sir.

21 CHAIRMAN BOLLWERK: And the Staff agrees
22 with that?

23 MS. LIAW: Yes, Your Honor.

24 JUDGE TRIKOUROS: And, Mr. Blanton, you
25 agree that neither ITAACS or license conditions are --

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1 totally outside of the licensing --

2 MR. BLANTON: Yes, sir.

3 JUDGE TRIKOUROS: Okay.

4 CHAIRMAN BOLLWERK: And is that something
5 Staff agrees with, as well?

6 MR. BLANTON: Yes. I mean, if there -- as
7 I said earlier, if there's -- if a member of the
8 public believes there's a problem with the inspection
9 program, and it does not satisfy NRC regulations, they
10 have 2.206 available, just like they do any other
11 failure to comply with a regulation in a nuclear power
12 plant. And if the Staff thinks it doesn't comply with
13 NRC regulations, it brings an enforcement action.

14 CHAIRMAN BOLLWERK: All right. Let me just
15 ask, does the Staff agree with Mr. Blanton's
16 representation about the lack of ITAACs and/or license
17 conditions relative to this, in terms of their
18 appropriateness? Let me put it that way.

19 MS. LIAW: Yes, Your Honor, we agree. And
20 we would just like to point out, also, that the
21 regulatory requirements are for the Applicant to
22 provide a description of the proposed program in the
23 FSAR, and petitioners have not shown how the FSAR is
24 deficient in meeting those NRC requirements, Your
25 Honor. And that requirement is under 52.79(a)(11),

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1 Your Honor.

2 CHAIRMAN BOLLWERK: All right. I think
3 we're going to get into a loop here, but the
4 petitioners argument, as I understand it, the
5 Intervenors argument, Joint Intervenors argument is
6 that the program says it will -- they have every
7 reason to believe it will say nothing about the kind
8 of inspections they want done; therefore, they don't
9 say something now, it's not going to happen.

10 MR. BLANTON: Can I respond to that, Your
11 Honor?

12 CHAIRMAN BOLLWERK: Surely.

13 MR. BLANTON: What the petitioners, if
14 that's what we call them, have said, is that the
15 program, if it complies with NRC regulations will be
16 inadequate. They don't contend it will not comply with
17 NRC regulations. They say even if it does, it's
18 inadequate. That's why it's not admissible.

19 CHAIRMAN BOLLWERK: All right. Anything
20 the Staff wants to say in that regard?

21 MS. LIAW: Oh, that's true, Your Honor.
22 And, also, the fact that the petitioners' true dispute
23 is with the design in this proceeding, as apparent in
24 their requested relief, which is for inspections
25 beyond what the NRC regulations require, their expert

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1 even proposes a design change to the AP1000 on page 8
2 of his declaration. So, clearly, if you look at what
3 they're asking for, Your Honors, their true challenges
4 are to 50.55A, as well as the certified design, and
5 not to the COL application.

6 CHAIRMAN BOLLWERK: Let me ask the Staff a
7 couple of questions about some other procedural
8 matters. You did not file an objection to the late
9 filed -- or the motion for leave to file late. You
10 think there were extraordinary circumstances here?

11 MS. LIAW: That's true that the Staff did
12 not object to the petitioners' motion, Your Honor, and
13 we stand by that position. The Board could rely on
14 Bellefonte in rejecting petitioners' failure to file
15 for an extension of time in a timely fashion;
16 although, the Staff would not object to the Board
17 considering the circumstances presented here as rising
18 to the level of extraordinary circumstances. But we
19 leave it to the Board to determine whether they're
20 proffered reasons rise to that standard.

21 CHAIRMAN BOLLWERK: Go ahead.

22 JUDGE TRIKOUROS: Just one more -- well,
23 another question. Do you believe that the petition
24 for intervention applies to the COLA, or to the DCD?
25 It is a legitimate COLA issue, or is it a DCD issue?

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1 MS. LIAW: Their challenge is to the DCD,
2 Your Honor, to the Certified Design Revision 15.

3 CHAIRMAN BOLLWERK: Another procedural
4 question. On the standing issue, Mr. Blanton
5 indicated he felt that what the Intervenors have
6 submitted in their reply is inappropriate under the
7 Commission cases that deal with supplementation of
8 petitions relative to standing issues. What is the
9 Staff's position on that?

10 MS. LIAW: The Staff also agrees that
11 petitioners have not met their standing requirements
12 here, Your Honor. Under Bell Bend, the petitioner
13 must show substantial and regular contacts within the
14 site vicinity. Here, petitioners failed to address
15 standing in their initial petition. And in their
16 reply, all they submitted were affidavits from the
17 organizational representative asserting that they had
18 previously filed declarations from residents within
19 the site vicinity, and that they continue to represent
20 those individuals. But petitioners failed to
21 establish who those members are, if they still reside
22 in that same vicinity. Under Bell Bend, they're
23 required to do so. And they do not clarify or cure
24 their defects in their reply brief, Your Honor, so
25 petitioners have not fulfilled the requirements to

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1 show standing in this proceeding.

2 CHAIRMAN BOLLWERK: So, do you agree that
3 the fact that they didn't say anything in this -- I
4 think I understood Mr. Blanton to say, the fact they
5 didn't say anything in their initial petition, they
6 can't really come back in their reply and say anything
7 about standing, and still have it fall within the
8 Agency's, or the Commission's precedent relative to
9 replies, and supplementing standing showings.

10 MS. LIAW: Well, Staff believes the Board
11 need not reach that specific issue. But, regardless,
12 petitioners did not cure their standing in their reply
13 brief in a sufficient fashion, so they have not
14 demonstrated standing in this proceeding.

15 CHAIRMAN BOLLWERK: And why isn't it
16 sufficient for an organization to come in and simply
17 certify that absolutely nothing has changed relative
18 to the initial filings that they made on standing?

19 MS. LIAW: Under Comanche Peak, COI 93-04,
20 the petitioner there tried to do the same thing and
21 rely on a prior demonstration of standing in a
22 previously contested portion of that same proceeding,
23 and the Commission held there that they would need to
24 reestablish that they still had standing, despite
25 having demonstrated standing in the prior portion of

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1 that proceeding. And in the circumstances before us,
2 we have a very similar situation, where petitioners
3 are attempting to rely on their standing demonstrated
4 in the prior portion of this contested proceeding,
5 Your Honor, and they cannot do that. They have to
6 show fresh demonstration of standing in each portion
7 of the proceeding.

8 CHAIRMAN BOLLWERK: All right. Judge
9 Trikouros?

10 JUDGE TRIKOUROS: Yes. Now, with respect
11 to graveness, the subject of graveness, the
12 Intervenors are saying that this identified issue is
13 a grave issue, possibly exceptionally grave issue.
14 The Southern Nuclear has stated that this is nothing
15 more than, I can almost quote them here, "Long-term
16 maintenance issue that does not pose any immediate
17 threat or harm." What is the Commission's, or the
18 Staff's position on that?

19 MS. LIAW: The Staff does not believe
20 petitioners have presented sufficient facts to
21 demonstrate that an exceptionally grave issue exists
22 in the application, Your Honors.

23 JUDGE TRIKOUROS: Do you agree that this is
24 nothing more than a long-term maintenance issue, or
25 that there's something more here?

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1 MS. LIAW: Well, what the Staff thinks is
2 that petitioners had a burden, if they thought that
3 there was an exceptionally grave issue, to address the
4 reopening standards under 2.326, and to demonstrate
5 with sufficient facts in an expert affidavit that
6 there is, actually, an exceptionally grave issue
7 presented here, and they have not met those
8 requirements, Your Honor. They have not demonstrated
9 that there exists such an exceptionally grave issue.

10 CHAIRMAN BOLLWERK: I believe Mr. Runkle
11 indicated that he felt you could find that in the
12 initial affidavit that was filed. Are you saying that
13 because they didn't denote what was -- didn't use
14 those particular words, or didn't cite that standard,
15 or are you saying it's just not in there?

16 MS. LIAW: We're saying, Your Honors, that
17 even if you look at the declaration, Staff thinks that
18 the facts presented in that do not present an issue
19 that is sufficiently grave, exceptionally grave,
20 sorry, Your Honors, under 2.326.

21 CHAIRMAN BOLLWERK: All right. Judge
22 Trikouros, do you have any other questions?

23 JUDGE TRIKOUROS: No.

24 CHAIRMAN BOLLWERK: Let me check with Judge
25 Jackson. Judge Jackson, do you have any questions for

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1 the Staff?

2 JUDGE JACKSON: I would like to ask two
3 quick questions.

4 CHAIRMAN BOLLWERK: Are you holding your
5 handset, because you're still fading in and out a
6 little bit.

7 JUDGE JACKSON: All right. Can you hear me?

8 CHAIRMAN BOLLWERK: That's a little better.
9 Thank you.

10 JUDGE JACKSON: I'd like to ask the Staff
11 a couple of quick questions. And a good reference
12 point for these questions would be Mr. Gundersen's
13 declaration. And the first question is from a
14 statement on page 5. It is Topic 23 at the top of the
15 page. It states, "The NRC Staff's response to these
16 through-wall penetrations of the steel containment is
17 that "secondary containment system" would have
18 protected public health and safety by preventing any
19 outside leakage of radioactive material." I'd like to
20 ask the Staff, does it consider the concrete portion
21 of a typical current generation PWR containment
22 structure to be a "secondary containment system?"

23 MS. LIAW: No, Your Honor.

24 JUDGE JACKSON: Does the Staff allow credit
25 to be taken for the presence of the concrete in terms

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1 of inhibiting the release of radioactive materials
2 following an accident?

3 MS. LIAW: No, Your Honor.

4 JUDGE JACKSON: Thank you. My second
5 question is on page 7, Note 34 at the bottom of page
6 7. It says, "Neither the NRC, nor the Applicant, SNC,
7 have evaluated the likelihood of through-wall
8 containment leak at Vogtle that could lead to greater
9 than design-basis isotopic leakage in the event of an
10 accident." My question is, is an evaluation of the
11 likelihood of through-wall containment leakage that
12 could lead to greater than design-basis isotopic
13 leakage required by current NRC regulations?

14 MS. LIAW: May I take one moment to consult
15 with the Staff, Your Honor?

16 JUDGE JACKSON: Yes.

17 CHAIRMAN BOLLWERK: Just as a procedural
18 matter, while they're speaking, we'll go ahead and
19 take a brief break so that you all can have a couple
20 of minutes before you go on to your rebuttal, if
21 that's acceptable to you. All right.

22 MS. LIAW: Forgive me, Your Honors. The
23 Staff is not entirely clear what Your Honor was
24 asking, but Staff would note that the Applicant must
25 satisfy the dose requirements under Part 100, assuming

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1 a technical specification leakage rate given under
2 Appendix J. I'm not sure if I was understanding your
3 question correctly, Your Honor.

4 JUDGE JACKSON: My question, was it clear
5 how it related to Topic 34 in the declaration?
6 Another way to ask the question would be whether or
7 not you concur with the statement in Topic 34 of the
8 declaration.

9 MS. LIAW: Well, the Staff would point out
10 that the petitioners have not specified how Statement
11 34 is true, Your Honor, and, therefore, does not meet
12 our contention admissibility standards under 2.309.
13 They have not sufficiently stated how this statement
14 is actually true, Your Honor, or how the FSAR fails to
15 meet this requirement.

16 JUDGE JACKSON: So, your contention is that
17 the application, the FSAR meets the regulatory
18 requirements.

19 MS. LIAW: Well, our position is that
20 petitioners haven't shown how the FSAR does not meet
21 the regulatory requirements, Your Honor, as they are
22 -- their burden is to show that in a contention that
23 there is a sufficient dispute with the application.
24 They have not done so with this statement in their
25 declaration.

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1 JUDGE JACKSON: All right. Thank you.

2 CHAIRMAN BOLLWERK: Judge Trikouros, you
3 had another question, I think?

4 JUDGE TRIKOUROS: Yes. Before I ask it, so
5 I think it's fair to say that the purpose of the
6 inspection program is to provide reasonable assurance
7 that there isn't a breach of containment at the time
8 that a design-basis accident occurs that would result
9 in a failure to meet the regulations for offsite dose.
10 Right?

11 MS. LIAW: That's correct, Your Honor.

12 JUDGE TRIKOUROS: And, of course, the
13 petitioners are saying that the inspection program is
14 not adequate to do that. The -- on page 15 of your
15 answer, you say that, "Although petitioners present a
16 facial challenge to the adequacy of Southern's
17 containment coatings inspection programs, the basis
18 for these claims is that the reactor design, itself,
19 is flawed, and that the vessel thus needs additional
20 inspection beyond what Southern has planned." And you
21 elaborate on that further, on subsequent pages. The
22 question is, shouldn't the nature of an inspection
23 program be aligned or coordinated in some manner with
24 the design of the plant without, necessarily, that
25 meaning that the plant design is flawed? So, when the

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1 inspection program is developed, it would take into
2 account the design of the plant. I mean, the
3 inspection program for Vogtle Units 3 and 4 would not
4 look identical to the inspection program for Units 1
5 and 2. Is that correct?

6 MS. LIAW: Yes, Your Honor.

7 JUDGE TRIKOUROS: So, one could challenge
8 the COLA in a sense, without that meaning that the
9 design is flawed.

10 MS. LIAW: Theoretically, a petitioner
11 could challenge the inspection program itself in the
12 COLA, but here, petitioners have not sufficiently
13 stated that there is a material dispute with the COLA
14 at issue.

15 JUDGE TRIKOUROS: I understand what your
16 position is, but you do agree that the inspection
17 program should be aligned with the design of the
18 containment. Not every containment is the same.

19 MS. LIAW: This is true, Your Honor.

20 JUDGE TRIKOUROS: The question really -- I
21 could move the question forward and say, clearly,
22 somebody could propose a reactor design that is such
23 that the current regulations do not apply to it. That
24 has not yet happened. I think the Intervenors are
25 saying that that has happened with respect to the

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1 AP1000. But, nonetheless, the regulations are the
2 regulations, and they do not account for that. Would
3 you agree with that?

4 MS. LIAW: That's true, Your Honor.

5 CHAIRMAN BOLLWERK: All right. Anything
6 further? Judge Trikouros, anything further? No?
7 Judge Jackson, do you have anything further for the
8 Staff?

9 JUDGE JACKSON: Nothing further.

10 CHAIRMAN BOLLWERK: All right. At this
11 point then, would you like to take a brief break, or
12 are you ready to proceed?

13 MR. RUNKLE: We're ready to proceed, Your
14 Honor.

15 CHAIRMAN BOLLWERK: All right.

16 MR. RUNKLE: We'll be fairly brief on this.

17 CHAIRMAN BOLLWERK: Okay.

18 MR. RUNKLE: Starting with the last point
19 that counsel for the Staff made, that in Paragraph 34
20 that the Intervenors somehow did not prove that their
21 statement was true. It's a statement that neither the
22 NRC, nor the Applicant can invalidate the likelihood
23 of a through-wall containment leak. It's sworn to be
24 the expert. I don't know what else you can say,
25 whether it's true or not. I mean, in looking at the

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1 other parts of 34.1, 34.2, and so on, it gives support
2 for that statement. And I think it's an incredible
3 burden that the Staff is asking the Intervenors to
4 show beyond a question of doubt that a statement that
5 is certified to by an expert, that somehow that
6 there's another showing of truth that needs to be made
7 here.

8 Secondly, the other statement the Staff
9 made that I think is intentionally misleading is that
10 these issues have been resolved in Revision 15 of the
11 DCD process. Now, we're up to Revision 18, and
12 looking at Revision 18 of the AP1000 design, there are
13 a number of issues on the face that have not been
14 specifically reviewed, or finalized, or approved in
15 that design. And one of the -- on the face of it,
16 it's the containment. Control room setup, seismic
17 qualifications, fire areas, heat removal, there's a
18 long list of these Tier 1 and Tier 2 components to the
19 design that the Staff has not finished their review.
20 And we won't know what the actual containment will
21 look like until all this review is conducted.

22 Mr. Blanton also said that under -- that
23 this process will be, hopefully, by the end of next
24 year, come to some kind of conclusion. Well, that's
25 just not going to happen. I mean, Westinghouse has

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1 already blown their last deadline by several months,
2 and so to say that there's any kind of resolution of
3 these containment issues, I think is intentionally
4 misleading.

5 We have one -- that we have one in front
6 of us now at the Vogtle plant that hasn't been
7 resolved, and it's not -- we don't know what -- if
8 these kind of things will be resolved. We do know
9 that in the COLA for the Vogtle plant, the specific
10 coating of the containment, and their inspection is
11 not there. So, we don't know what those are, we don't
12 know if they're going to be Revision 18, or Revision
13 whatever, will be addressing these issues.

14 Thirdly, I think there's been some
15 confusion about what is new information, and what is
16 new analysis. And information may be out there, but
17 until somebody puts it together into some coherent
18 form to do the analysis of what this all means, I
19 think that's the difference in these latest cases. It
20 was when the NRC Staff came out with their final
21 environmental report, had all this information out
22 there, and then somebody said well, all that
23 information, we'll do a new analysis. That
24 information maybe out there, but until an expert
25 actually looks at all the ramifications of it using

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1 the latest up-to-date information, I think it would be
2 very difficult to have anybody file petitions, that
3 then it contained information that had been out there
4 before.

5 And going back to the original petition,
6 the original contentions, and new contentions, new
7 filed contentions all have a requirement of having an
8 expert affidavit, or an expert opinion that supports
9 it. Well, any kind of expert opinion is going to rely
10 on information that's out there. So, I think it's an
11 unachievable standard to say just because different
12 facts are maybe present, to say that that's not
13 enough, that's not that kind of analysis. So, until
14 Mr. Gundersen did his report, until he did his
15 evaluation of the Vogtle design, we did not have --
16 there may have been information out there, but this
17 was not the new analysis.

18 And on this point, I think Chairman Ray of
19 the ACRS was not wrong. And he was addressing those
20 issues that were specifically relevant to a COLA that
21 up until that point, until -- that the ACRS, and the
22 other NRC Staff had not addressed until Mr. Gundersen
23 put the information together in an affidavit and a
24 report, that there was no new information under the
25 rules. And this conclusion was after a lengthy

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1 discussion of all the issues, and I think that the
2 ACRS is addressing this again in subsequent meetings
3 after Mr. Gundersen's report. We don't know what will
4 come out of the DCD on the AP1000. At this point, we
5 don't know if they'll address any of these issues.

6 CHAIRMAN BOLLWERK: Let's assume that the
7 Intervenors could have hired Mr. Gundersen back in the
8 summer of 2008 as part of their review of the original
9 COL application. Could Mr. Gundersen have prepared the
10 kind of report he prepared for the ACRS at that point,
11 something like it?

12 MR. RUNKLE: Well, I think that the --

13 CHAIRMAN BOLLWERK: I know they didn't, but
14 what if they had, what if they could have?

15 MR. RUNKLE: There were -- subsequent to
16 2008, there were several major problems with
17 containment. In fact, the -- one of the things that
18 the ACRS looked at is June 18th, 2010, which was an
19 NRC Information Notice 2010-12, Containment Lining
20 Corrosion. And until June 2010, even the NRC had not
21 began to put the puzzle together to look at how across
22 the lines, how many the containment liner corrosion.

23 Beaver Valley, April 2009, the Brunswick
24 is in late 2008 during refueling, Salem was October
25 2009, and trying to put together the different bits

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1 and pieces to be able to say this is a problem of the
2 containment liner that's being corroded. So, I don't
3 think it would have been possible. I'm sure Mr.
4 Gundersen could have addressed parts of the problem,
5 but, certainly, not to the extent that needed to be
6 done for a valid contention. And, certainly, I think
7 part of the NRC Information Notice was in response to
8 Mr. Gundersen's report, bringing it up as a new
9 analysis, new information.

10 CHAIRMAN BOLLWERK: So, what was the item,
11 the event that brought this whole thing into focus, so
12 that -- something Mr. Gundersen, must have made him
13 write that report for some reason?

14 MR. RUNKLE: Well, it was because after the
15 Beaver Valley, and Salem, and the Brunswick reactors
16 that were showing corrosion, and looking at some of
17 the other reports that he cites in his reports and
18 other analysis. This was looking at the AP1000 in the
19 design flaw with the containment. But subsequent to
20 the presentation to the ACRS, when Chairman Ray said,
21 you know, a good bit of this could be part of a COLA,
22 that's when it was brought forward as a new
23 contention. So, at some point, Mr. Gundersen does his
24 report, he does the analysis of AP1000, he does his
25 specific analysis of what is in the Vogtle COLA. And

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1 I don't know at what date he could have brought
2 something together earlier. And as soon as we got the
3 information, in good faith we brought it to the NRC at
4 timely as we could.

5 CHAIRMAN BOLLWERK: All right.

6 MR. RUNKLE: Lastly, Judge Trikouros, there
7 was something you said in our colloquy earlier on that
8 I just need to follow-up. And I'm not sure that you
9 want to answer this question, or not. You had talked
10 about as an in-tact containment being one-half percent
11 release per day, and I missed your citation on that.

12 JUDGE TRIKOUROS: I was referring to the
13 technical specification limits associated with
14 release. The integrated leak rate test that's
15 performed three times in 10 years, something like
16 that, has to show that the technical specification
17 requirements are met. And I believe that number is on
18 the order -- it may actually be half a percent per day
19 of the containment atmosphere by weight.

20 MR. RUNKLE: So, the containment
21 atmosphere, as opposed to total radioactivity release.

22 JUDGE TRIKOUROS: No. The assumption is
23 that the entire weight, if you looked at the entire
24 weight of the containment atmosphere, one half of a
25 percent of that would get released.

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1 MR. RUNKLE: Okay.

2 JUDGE TRIKOUROS: That's the specification.
3 Now, again, I'm going from memory, so please don't --
4 you could look up the tech spec yourself.

5 MR. RUNKLE: Yes. I had just missed the
6 citation on it. And I wasn't quite sure from your
7 question whether it was atmosphere, or total -- one
8 half a percent of the radioactivity in containment.

9 JUDGE TRIKOUROS: It ends up being,
10 basically, that. I mean, it's a tenth -- it is a half
11 a percent of the total atmosphere by weight.

12 MR. RUNKLE: Okay. I have no further
13 things. I'll be glad to answer questions, if we can.

14 CHAIRMAN BOLLWERK: Let me just raise one
15 issue with you. Both the Staff and the Applicant have
16 indicated that we really -- that the filings that you
17 made, or the reply filing you made relative to the
18 standing issue just isn't going to cut it, because it
19 came too late. Do you want to say anything about
20 that? That came in your reply, there was no mention
21 of it in the original petition, recognizing, again,
22 you did not draft the original petition.

23 MR. RUNKLE: Yes. In drafting the original
24 petition it seemed to me that you would put
25 affidavits, and certainly affidavits that were

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1 submitted subsequently were adequate. I mean, if you
2 have standing in 2008, and somebody who knows --
3 intimately is familiar with organization, say nothing
4 has changed, that seems to me an adequate response.
5 If you need to have every member who has affidavits
6 from earlier to submit those, I think that's not
7 required. And in the original petition, there was a
8 fairly substantial number of declarants showing that
9 they were within the 50 miles. And I don't even thing
10 it was challenged at that time. It's just the 50-mile
11 limit is so inconclusive that in most of these cases,
12 nobody even challenges standing. So, having the
13 Executive Director say nothing substantially has
14 changed seems to me certainly to fit any kind of
15 requirement.

16 CHAIRMAN BOLLWERK: All right. Judge
17 Trikouros?

18 JUDGE TRIKOUROS: Yes. Just one more item.
19 You had indicated earlier that you considered the
20 containment flawed, the containment design flawed.
21 You heard me ask the question of the Staff Counsel
22 regarding could you have an inadequate inspection
23 program, or could the current standards not be
24 applicable to a certain design, but that does not mean
25 the design is flawed. Do you still believe that

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1 having heard all that, do you still contend that the
2 AP1000 design is flawed? Is that still your position?

3 MR. RUNKLE: Yes, it's a flaw in flaw. I
4 mean, the containment design itself is flawed, and the
5 inspection and coating program is also flawed. I'm
6 sure you could have a hypothetical plant that may not
7 have a flawed design, and you could have an inadequate
8 inspection program. But in this case, I mean, the
9 design is what it is, and the inspection and the
10 coating programs are inadequate to find potential
11 significant, let's go back to our excessively grave --
12 exceptionally grave standard.

13 JUDGE TRIKOUROS: But you would say the
14 same thing, I believe, with present day reactors, that
15 the inspection program is inadequate.

16 MR. RUNKLE: I have no basis for saying one
17 way or the other on that. I've not looked at the
18 different inspection programs for existing reactors,
19 as opposed to what's in the COLA for the Vogtle.

20 JUDGE TRIKOUROS: Well, the vast majority
21 of Mr. Gundersen's information in the exhibits
22 provided us, basically, applies to existing plants.
23 I would say pretty much all of it are discussions
24 regarding existing plants, data regarding existing
25 plants. And I don't believe that you're saying that

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1 the design of existing plants is flawed. I believe
2 that Mr. Gundersen is saying that the inspection
3 program is inadequate.

4 MR. RUNKLE: And I think in looking at the
5 affidavit and report by Mr. Gundersen, he bases that
6 on some of the NRC investigations where they actually
7 make the conclusion that there are significant defects
8 in the containment, or potential defects in the
9 containment of the AP1000, based on their analysis of
10 the existing PWRs and BWR programs. So, it's not that
11 -- I mean, since you have the possible through-holes
12 in the containment in the existing reactors, I think
13 you can draw a conclusion that's going to happen at
14 the Vogtle reactor, also, as one part of putting the
15 puzzle together to reach that conclusion.

16 CHAIRMAN BOLLWERK: All right. Anything
17 further? Judge Jackson, do you have anything further
18 for Mr. Runkle?

19 JUDGE JACKSON: Nothing further.

20 CHAIRMAN BOLLWERK: All right. Then I think
21 at this point the Board has concluded its questions,
22 and the parties have made their presentations. Let me
23 mention a couple of -- I should mention, first of all,
24 that we appreciated very much the presentations that
25 you all made. I certainly found them, I know Judge

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1 Trikouros did, to be very useful and helpful in terms
2 of helping us to decide this case.

3 In terms of the admissibility of the
4 contention, under the Commission's rules, 2.309(i), I
5 believe, we would be required either to decide this by
6 I believe the 8th of November, if I've got the right
7 date, which is 45 days after the reply, or to advise
8 the parties and the Commission that we won't make that
9 date, and we will do one or the other. So, you will
10 be hearing from us one way or the other on it by the
11 8th of November on that issue.

12 I should just mention, also, a couple of
13 other items. If the contention were to be admitted,
14 in setting a schedule under Section 2.332(d), the
15 Board will need to make an assessment about whether a
16 merits determination based on an evidentiary hearing
17 would need to await issuance of the Staff FSER, which
18 is currently scheduled, I believe, for April of 2011,
19 if I'm reading the website right. That appears to be
20 right, or could proceed based on the advanced SER with
21 no open items, which is scheduled for issuance, I
22 think, the beginning of next week, if that's -- again,
23 is there an update on that date?

24 MR. JOSHI: Ravindra Joshi, Project
25 Manager. The Advanced FSER with no open items are

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1 currently scheduled -- are estimated to be completed
2 by the end of the year.

3 CHAIRMAN BOLLWERK: The end of the year.
4 Okay.

5 MR. JOSHI: That's the current estimate
6 right now.

7 CHAIRMAN BOLLWERK: Okay. In any event,
8 given the advanced stage that the Staff or you in this
9 proceeding, a pre-hearing conference regarding
10 schedule is likely to convene fairly promptly followed
11 by any Board determination to admit the contention.
12 So, obviously, we're aware of where the proceeding is,
13 and we'll have to proceed promptly, if the contention
14 were to be admitted. That's just a heads-up for the
15 parties.

16 Assuming possibly the contention were to
17 be admitted, the parties should be aware that general
18 discovery provisions under 2.336, including the need
19 for the NRC Staff to provide a hearing file would be
20 activated regardless of whether there's any Board
21 order or party discovery request. Also, relative to
22 general discovery, the parties may wish to discuss
23 whether they want to prepare and provide privilege
24 logs of waive such logs as we've done in the prior
25 Vogtle ESP and the earlier part of this COL

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1 proceeding. So, again, just a heads-up for folks in
2 case -- in the event the contention were to be
3 admitted.

4 At this point, I think all we need to do
5 before we adjourn is to give some thank yous to some
6 folks who have been involved, to Felicia Rogers and
7 the folks out in Region II that helped coordinate the
8 video conference from the NRC's Atlanta office, very
9 much appreciate their efforts. Also, the ASLBP IT
10 Specialist, Andy Wilke, Matt Kutchen, and Joe Doiker
11 who helped us with setting this proceeding up, as
12 well, as well as the folks from Via, the contractor
13 that helps us run our audio system and video system
14 here. And, also, Wen Bu, which is a name some of you
15 may remember. She's actually now our former law
16 clerk. She's actually moved on to bigger and better
17 things in private practice. And Jonathan Eser, who is
18 our current law clerk, and also to Matina Solovakos
19 from the ASLBP staff who helped us set this up. So,
20 again, we appreciate their efforts.

21 At this point -- yes, sir?

22 MR. RUNKLE: Yes. Excuse me, sir. Is there
23 a timetable on the limited appearance statements?
24 You're looking at a November 8th deadline.

25 CHAIRMAN BOLLWERK: Right.

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1 MR. RUNKLE: Is there a time period -- I
2 know there were some folks that weren't part of the
3 Intervenors that would like to make some statements.

4 CHAIRMAN BOLLWERK: I would suspect that it
5 would be a good idea for them, assuming they want to
6 get something in, to get it in by the 8th of November,
7 or thereabouts.

8 MR. RUNKLE: Okay. We'll give them like a
9 November 1st deadline.

10 CHAIRMAN BOLLWERK: That would be a good
11 idea, I think, to get it all on the record as promptly
12 as possible.

13 MR. RUNKLE: All right.

14 CHAIRMAN BOLLWERK: All right. Anything
15 else any of the counsel have?

16 MR. BLANTON: No, sir.

17 CHAIRMAN BOLLWERK: All right. And, again,
18 we appreciate it. Thank you. Mr. Runkle, you had some
19 interesting circumstances under which you've been
20 before us, and we appreciate your efforts. I'm sure
21 Mr. Zeller certainly appreciates that you kind of came
22 into the breach to help him out, and we do appreciate
23 your efforts in being able to make yourself available,
24 and to provide the pleadings for the 20 Intervenors in
25 this case. Again, thank you to the Staff and the

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1 Applicant Counsel for your presentations, as well.
2 And at this point, we stand adjourned. Thank you.

3 (Whereupon, the proceedings went off the
4 record at 12:07 p.m.)

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