

**NUCLEAR REGULATORY COMMISSION**

Title: Nextera Energy Seabrook  
Seabrook Station, Unit 1  
Oral Argument

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## 1 UNITED STATES OF AMERICA

## 2 U.S. NUCLEAR REGULATORY COMMISSION

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4 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

5 + + + + +

6 ORAL ARGUMENT

7  
8 In the Matter of: : Docket No.

9 NEXTERA ENERGY : 50-443-LR

10 SEABROOK, LLC :

11 (SEABROOK STATION, : ASLBP No.

12 UNIT 1) : 10-906-02-LR-BD01

13 \_\_\_\_\_:

14 Tuesday,

15 November 30, 2010

16  
17 Portsmouth Public Library

18 Meeting-Room

19 175 Parrott Avenue

20 Portsmouth, NH

21 BEFORE:

22 PAUL S. RYERSON, Chairman and Administrative Judge

23 DR. RICHARD E. WARDWELL, Administrative Judge

24 DR. MICHAEL F. KENNEDY, Administrative Judge

25

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

(9:00 a.m.)

CHAIRMAN RYERSON: Welcome, everyone.

Good morning again.

We are here today to conduct an initial prehearing conference on the application of NextEra Energy Seabrook, LLC, to renew the operating license for Seabrook Station Unit 1.

I am Paul Ryerson. I am an Administrative Judge, trained as a lawyer. I am chair of the independent Atomic Safety and Licensing Board that the Nuclear Regulatory Commission has assigned to this matter. On my right is Judge Richard Wardwell. Dr. Wardwell is a civil engineer. On my left, Judge Michael Kennedy, and Dr. Kennedy is a nuclear engineer.

I would like to take just a moment to introduce some of the staff who helped us put this together for this proceeding. We have -- Hillary Cain is our law clerk. Somewhere, perhaps running around here, is Ashley Prange, who is the staff person who has -- there's Ashley. Thank you, Ashley. Who has helped put all of this together for us. We have Andrew Welkie, who has wired the sound system that we have today. Andy?

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1 And again, finally, I want to thank the  
2 -- thank Portsmouth for making this facility  
3 available, and particularly for opening it early, so  
4 people didn't have to wait out in the cold ahead of  
5 our 9:00 session. I thank Portsmouth and the  
6 Portsmouth Police Department for getting here bright  
7 and early today.

8 Any comments from my fellow Judges at  
9 this point? Judge Wardwell?

10 JUDGE WARDWELL: Nothing.

11 CHAIRMAN RYERSON: Judge Kennedy?

12 JUDGE KENNEDY: No.

13 CHAIRMAN RYERSON: Okay. I would like  
14 now to ask the counsel or other representatives of  
15 the participants to introduce themselves. Let's  
16 start with the applicant.

17 MR. FERNANDEZ: May it please the Board,  
18 my name is Antonio Fernandez, counsel for NextEra  
19 Energy Seabrook. With me I have Steve Hamrick. And  
20 with us at counsel time, although he has not entered  
21 an appearance and will not be speaking today, is Mr.  
22 Dave Lewis, also counsel for Seabrook.

23 CHAIRMAN RYERSON: Thank you. Welcome.

24 The first petitioner, Friends of the  
25 Coast and New England Coalition.

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1 MR. SHADIS: Thank you. My name is  
2 Raymond Shadis. I am pro so representative for  
3 Friends/NEC, as we style it. And with me today is  
4 Mr. Paul Blanche, electrical engineer, and our  
5 expert on those engineering issues. And also, on my  
6 right is Mary Lampert, Friends of the Coast member,  
7 and the person who has done the most work on our  
8 SAMA question.

9 CHAIRMAN RYERSON: Thank you, Mr.  
10 Shadis, and welcome to all of you.

11 Beyond Nuclear? And we have shorthanded  
12 your longer names on the card. It is Beyond  
13 Nuclear: The Seacoast Anti-Pollution League and The  
14 New Hampshire Sierra Club.

15 MR. GUNTER: Yes, thank you. My name is  
16 Paul Gunter, and I am the pro so representative for  
17 Beyond Nuclear, and I will be representing New  
18 Hampshire Sierra Club and the Seacoast Anti-  
19 Pollution League.

20 CHAIRMAN RYERSON: And with you at the  
21 table are?

22 MR. EHRENBURG: Kurt Ehrenberg, New  
23 Hampshire Sierra Club, member and resident of Rye,  
24 New Hampshire.

25 CHAIRMAN RYERSON: And?

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1 MR. BOGEN: I'm Doug Bogen, Executive  
2 Director for Seacoast Anti-Pollution League, based  
3 in Exeter, New Hampshire.

4 CHAIRMAN RYERSON: Thank you. And  
5 welcome to you all.

6 And, finally, here on the far right --  
7 or our right anyway -- we have the NRC staff.

8 MS. SPENCER: Yes. My name is Mary  
9 Spencer, and with me are my co-counsel Emily  
10 Monteith and Max Smith. And then, there are a  
11 number of NRC staff members in the audience today.

12 CHAIRMAN RYERSON: Thank you, Ms.  
13 Spencer. And welcome to you.

14 Now, our purpose today is an important,  
15 but in many ways limited, one. The Atomic Energy  
16 Act provides an opportunity for interested  
17 stakeholders to petition for a hearing on specified  
18 issues, generally called contentions. And we have  
19 in this proceeding two petitions.

20 The first is filed jointly by Beyond  
21 Nuclear: The Seacoast Anti-Pollution League and New  
22 Hampshire Sierra Club, and it asserts one  
23 contention. And I think for convenience we will  
24 refer to you generally as Beyond Nuclear. We don't  
25 plan to -- or, rather, yes, as Beyond Nuclear. We

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1 don't plan to slight anyone, but I think it will be  
2 easier to do that.

3 Then, we have a second petition filed by  
4 Friends of the Coast and the New England Coalition  
5 that asserts four contentions, one of which has I  
6 believe six subparts, which we will probably deal  
7 with individually in the proceedings today, if we go  
8 through that fourth contention.

9 Anyone can petition for a hearing, but  
10 the Commission's rules require certain things before  
11 a hearing will actually be held. And what we will  
12 mostly be concerned with today, not exclusively but  
13 mostly, is the requirement that a petition set forth  
14 one or more admissible contentions. What is an  
15 admissible contention?

16 The Commission's rules set forth the  
17 requirements for an admissible contention, and there  
18 are at least six specific requirements that we will  
19 be applying to these contentions or proffered  
20 contentions. But in a nutshell, they really involve  
21 some practical issues.

22 The first issue is, does the contention  
23 raise an issue that is appropriate for a Nuclear  
24 Regulatory Commission hearing before an Atomic  
25 Safety and Licensing Board? In other words, is the

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1 issue something that is relevant to what the NRC  
2 must be considering in considering the license  
3 renewal request?

4 And the second issue, the second  
5 fundamental issue is, does the contention raise a  
6 genuine issue? In other words, does it raise a  
7 genuine dispute? Has the petition shown that a  
8 hearing will not in effect be a waste of everyone's  
9 time and resources?

10 And, clearly, petitioners do not need to  
11 win their case at the hearing -- at the contention  
12 admissibility level. Okay? But generally a  
13 petitioner must show at least some minimal factual  
14 support -- some minimal factual support for its  
15 position.

16 A couple of ground rules about how we  
17 intend to proceed today. There are literally  
18 several hundred pages of briefs that all of the  
19 parties have filed. We appreciate that. We have  
20 read them. And so we are going to dispense with any  
21 formal statements from any of the parties. We think  
22 we know what your basic positions are. We have read  
23 those briefs.

24 As indicated in our order, therefore, we  
25 are going to jump to some specific questions that

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1 those briefs have raised on the part of one or more  
2 members of the Board. And I think what we will do,  
3 as I said, primarily we will deal with contentions  
4 one at a time, and we will follow an order, going  
5 through each contention one after the other. I  
6 think we will probably informally follow an order  
7 here of who takes the lead, although different  
8 Judges may jump in at any point.

9 But what we would like to try to do is,  
10 when we ask a question, we will focus it on a  
11 particular participant. It may be the case that a  
12 particular question is also appropriate for one or  
13 more other participants to comment on. I wouldn't  
14 expect that one petitioner will comment on another  
15 petitioner's contention. But we will try, where  
16 appropriate, to ask the applicant or the staff, if  
17 they have a comment on a question, for example,  
18 given to a petitioner.

19 Often it really won't be necessary, I  
20 think. Some of the questions will be quite focused  
21 and really not necessarily something that other  
22 participants want to comment on. If we don't ask  
23 you about it and you do want to comment on it, raise  
24 your hand or something and we will let you speak to  
25 it.

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1 But, again, I think you will find most  
2 of our questions will be quite focused on the  
3 participant to whom we ask a question. And if we  
4 really wish further comment, we will try to ask the  
5 other affected participants.

6 We will begin I think with the one  
7 contention filed by the Beyond Nuclear group. I  
8 hope we will finish that before 10:00. We will  
9 spend most of our time on the Friends of the Coast  
10 petition, which has, as I said, four contentions,  
11 one of which has multiple subparts. So that  
12 probably will end up taking the bulk of our time.

13 We hope and expect to finish by 1:00.  
14 We will take at least one break, probably at a  
15 convenient time around 10:30. If it appears that we  
16 cannot finish by 1:00, we will try to decide that  
17 early, and we will break for lunch. But I really,  
18 as I said, hope and expect that we will finish by  
19 1:00. That gives us essentially four hours --  
20 nearly four hours for argument at some point,  
21 particularly when the subject is the adequacy of  
22 pleadings as opposed to the merits. Three or four  
23 hours is probably more than enough time, I think.

24 Any comments from my fellow Judges --  
25 Judge Wardwell -- at this point?

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1 JUDGE WARDWELL: No comment.

2 CHAIRMAN RYERSON: Judge Kennedy?

3 JUDGE KENNEDY: No comment.

4 CHAIRMAN RYERSON: Any questions or  
5 comments from any of the participants before we  
6 begin?

7 (No response)

8 Okay, then. As I said, we'd like to  
9 begin with the one contention that has been filed by  
10 the Beyond Nuclear group. And I have a couple of  
11 questions.

12 Mr. Gunter, I take it -- there seemed to  
13 be some confusion in the pleadings about your  
14 position on the NRC's rule that permits an  
15 application for renewal to be filed 20 years before  
16 expiration of a license. And my understanding is  
17 you are not challenging that rule in this  
18 proceeding. Is that correct?

19 MR. GUNTER: Yes, sir. As the Board is  
20 familiar, we filed a joint petition for rulemaking  
21 on August 18, 2010. So in a separate venue we have  
22 actually taken up the issue of the rule.

23 I think the issue before the Board today  
24 is actually how the rule is being applied by the  
25 applicant. And it is our concern that on the face

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1 value of the application there are some significant  
2 omissions that raise the question on the adequacy of  
3 the environmental report informing the agency, so  
4 that it can fulfill its obligation to prepare an  
5 environmental impact statement.

6 So, you know, the issue is whether or  
7 not the environmental report actually is  
8 sufficiently complete, given the exhibits that we  
9 have provided. The issue is given the -- where wind  
10 energy is today, is -- and the plans and the  
11 development and, you know, what -- the exhibits as  
12 we have presented them to you, is it reasonable as  
13 an alternative?

14 And so I think that is the matter before  
15 the court today, not so much the rule as -- well,  
16 actually, not at all about the rule itself. It is  
17 how the rule has been applied in this application.

18 CHAIRMAN RYERSON: Okay. Let me see if  
19 I can restate your position, and tell me if this is  
20 pretty much accurate. In a separate proceeding in  
21 front of the Commission, which is appropriate  
22 because these are the Commission's rules, not our  
23 rules. We follow the rules. The Commission gets to  
24 make rules. You have challenged the notion that it  
25 is appropriate to file a renewal application 20

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1 years before expiration. But that is a separate  
2 proceeding, and that is not in front of us.

3 What I understand your argument in front  
4 of us to be is that choices have consequences, that  
5 if the applicant chooses to file a renewal  
6 application 20 years before expiration of its  
7 current license, it is entitled to do that under the  
8 rules as they now exist, can do that for any  
9 business reason it wants, or no reason at all. It  
10 is entitled to do that.

11 But there may be certain consequences in  
12 that possibly it becomes somewhat more difficult for  
13 the applicant to argue that speculation about 20  
14 years from now is speculation, or projection about  
15 20 years from now is speculation, because they have  
16 in fact chosen to exercise their right to apply for  
17 a renewal 20 years before expiration of their  
18 license. Is that a fair characterization of your  
19 position?

20 MR. GUNTER: Yes, sir.

21 CHAIRMAN RYERSON: Okay.

22 MR. GUNTER: And, you know, I think more  
23 particular to this case, the applicant has chosen to  
24 base its decision on the preponderance of data from  
25 2008 for a licensing action requested for 2030. So,

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1 you know, that is in fact -- what they are relying  
2 upon, even in this date -- for this current  
3 proceeding is already dated, and that -- the data  
4 that they provided already reflects an inaccuracy.

5 So the -- our concern is is that the  
6 argument that the applicant is making in fact, in  
7 our view, would be misleading to the agency in its  
8 preparation of an environmental impact statement.

9 CHAIRMAN RYERSON: Okay. Well, on the  
10 specific question of whether you are challenging the  
11 rule, you do not believe you are challenging the  
12 rule in the proceeding today in front of us. And  
13 I'd like to -- Ms. Spencer, if I can ask you for the  
14 NRC staff position. You have argued, I believe,  
15 that this is a rule challenge in violation of  
16 Commission regulations.

17 And given at least my understanding of  
18 what they are saying, of what petitioner is saying,  
19 do you still consider this a challenge to the NRC  
20 rule?

21 MS. MONTEITH: If I may answer that  
22 question, Your Honor. We do believe it is  
23 effectively a challenge to the rule. As the  
24 petition -- or, excuse me, the petitioner's reply  
25 states, the significant omissions in the applicant's

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1 ER are fundamentally the result of the premature  
2 submittal of the application 20 years in advance of  
3 the current license's date. That's page 18 and 19  
4 of the reply.

5 CHAIRMAN RYERSON: If you were to read  
6 their contention the way I summarize it, the way I  
7 perhaps read it, would you then consider it a  
8 challenge to the Commission's regulation?

9 MS. MONTEITH: Would you mind repeating  
10 that?

11 CHAIRMAN RYERSON: Suppose what they are  
12 saying is that the applicant is perfectly entitled  
13 to make a business decision, any decision, to file  
14 20 years before expiration of the current license.  
15 But decisions have consequences, and one of the  
16 consequences they argue is that the notion that what  
17 happens between 2030 and 2050, that the applicant  
18 says, "Well, that's speculation," maybe they can't  
19 make that argument anymore, or maybe they can't make  
20 it quite as forcefully, because, after all, they are  
21 the ones who have chosen to have us consider today,  
22 in 2010, what might be occurring in 2030 through  
23 2050. Would you consider that a challenge to the  
24 rule?

25 MS. MONTEITH: If I may have a moment,

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1 Your Honor.

2 (Pause)

3 Okay. Your Honor, it does appear to be  
4 a challenge to the rule, because the basis of the  
5 argument is that because the ER is filed now,  
6 instead of 10 years from now, it renders -- it  
7 cannot consider offshore wind power as a reasonable  
8 alternative to the extent it would in 10 years. And  
9 it seems to challenge the reasonableness of the  
10 ability of the applicant to submit the LRA at this  
11 time.

12 CHAIRMAN RYERSON: Okay.

13 MS. MONTEITH: So in 10 years or 20  
14 years, if they submitted it at that time, then the  
15 ER would be adequate, because offshore wind would be  
16 possibly more developed and might serve more as a  
17 reasonable alternative than it is now. But because  
18 they are filing it now, it is inadequate, because it  
19 cannot consider it to this same extent.

20 CHAIRMAN RYERSON: Thank you.

21 Mr. Fernandez, let me ask you for the  
22 applicant's position on that. Do you consider this  
23 a -- do you consider the position of Beyond Nuclear,  
24 as we have discussed it here, a challenge to the  
25 Commission's regulations?

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1 MR. FERNANDEZ: Certainly, certain parts  
2 of their pleadings, their written filings, do call  
3 into question whether what they are doing is raising  
4 a contention or challenging the Commission's  
5 regulations. It is confusing, to be kind, to the  
6 petition sometimes, because it is not clear whether  
7 they are challenging the Commission's regulations or  
8 not.

9 I did not read, having read their  
10 petition several times, read it the way the Board  
11 has read it. So I may disagree that that is an  
12 accurate reading of the written filings. And as the  
13 Board is well aware, the petitioner is not allow to  
14 amend its contentions at the hearing -- at the  
15 prehearing conference today.

16 So our position would be that the  
17 written filings, as they are before the Board, to a  
18 certain degree do challenge the Commission's  
19 regulations. And to the extent that they do so,  
20 then they are not admissible. And for a variety of  
21 other reasons that I'm sure we'll explore in a  
22 little bit, the portions that do not seek to  
23 challenge the Commission's regulations are  
24 inadmissible.

25 CHAIRMAN RYERSON: Thank you.

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1 MR. GUNTER: Judge Ryerson, may I  
2 comment?

3 CHAIRMAN RYERSON: Yes.

4 MR. GUNTER: I think that -- just to be  
5 clear, that the -- if in fact the applicant makes  
6 this -- the fact that they have made this choice to  
7 put in an application in 20 years makes it paramount  
8 that they provide the Board with a sufficiently  
9 complete record.

10 And that has been the emphasis of our  
11 contention, that they -- in making an application 20  
12 years in advance, they have not fulfilled their  
13 obligation, which is paramount because it is in such  
14 advanced stage with the application. So it is  
15 really important that the rule be followed that the  
16 record be complete.

17 And the fact that they have left out  
18 such significant and so numerous exhibits relative  
19 to the licensing -- the requested licensing action  
20 itself, you know, raises the issue that we have this  
21 dispute, where they would not consider a memorandum  
22 of understanding between the Department of Energy or  
23 -- and the Department of Interior and the State of  
24 Maine.

25 You know, the fact that they don't

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1 consider the University of Maine's extensive  
2 development for an -- what the Governor of Maine has  
3 called an appropriate project --

4 CHAIRMAN RYERSON: On this point,  
5 though, I think let's -- let me clarify one thing,  
6 and then we can move on to a somewhat different  
7 point. You do not challenge the right in the  
8 abstract of the applicant to be -- under the  
9 Commission's present rule, put aside your challenge  
10 in front of the Commission to those rules. Under  
11 the rules as they now exist, you don't say that it  
12 is unlawful in any way for the applicant to be  
13 filing 20 years ahead of time.

14 MR. GUNTER: Absolutely not.

15 CHAIRMAN RYERSON: The Commission's  
16 rules let them do that. Thank you. Now, let me ask  
17 you this. Let's get to the question of they are  
18 filing an application 20 years before expiration of  
19 the current license. There is an obligation, I  
20 think everybody agrees, under NEPA, the National  
21 Environmental Policy Act, to consider reasonable  
22 alternatives.

23 There seems to be some dispute as to the  
24 timeframe for the consideration of reasonable  
25 alternatives. Now, I think you would agree, would

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1 you not, that if the -- assuming the appropriate  
2 timeframe were today, that an integrated connected  
3 system of windmill power, offshore windmill power,  
4 is not a feasible alternative, because it doesn't  
5 exist today. Is that -- I mean, you would agree  
6 with that. Today -- I'm not saying that is the  
7 test. I'm just saying --

8 MR. GUNTER: Right. Well, I think that  
9 we begin to parse out what we mean by feasible.

10 CHAIRMAN RYERSON: It doesn't exist  
11 today.

12 MR. GUNTER: Well, I think feasible  
13 means possible. And we would argue that there is  
14 sufficient exhibits that we have offered in support  
15 to demonstrate that it is not only possible, but  
16 that it is proceeding.

17 And not only is it proceeding, but it is  
18 aggressively proceeding under the expert opinion,  
19 from the Governor of Maine to -- who sees this as a  
20 technologically feasible proceeding, to the  
21 existence of a Google corporation putting in a \$5  
22 billion investment to lay the vertebrae for an east  
23 coast high voltage DC transmission line for offshore  
24 wind.

25 So we -- in terms of feasible, we see

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1 that there is ample demonstration that it is  
2 technically feasible, and that it is commercially  
3 viable. So along those lines, we would argue that,  
4 yes, it is feasible today, because we have such a  
5 demonstration that the Governor has said that it is  
6 appropriate to pursue five gigawatts of offshore  
7 wind from the Gulf of Maine.

8 And, you know, the applicant hasn't even  
9 addressed what is going offshore in Massachusetts or  
10 Rhode Island and in the rest of the --

11 CHAIRMAN RYERSON: Let me -- and I hate  
12 to cut you off, but we are trying to move along.  
13 Maybe I can phrase my question a little more  
14 clearly. I understand your position is that  
15 offshore wind is a feasible alternative to be  
16 considered, certainly by the year 2030. Is that  
17 correct? I think that can be answered yes or no.

18 MR. GUNTER: The question of whether it  
19 is feasible, is it -- are we correct in  
20 understanding that that is an issue for the full  
21 hearing, and that what is before this proceeding  
22 today is whether or not the contention is -- you  
23 know, is addressing a problem, or discussing a  
24 dispute?

25 CHAIRMAN RYERSON: I am trying to

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1 ascertain what your position is as a petitioner, and  
2 your position, I think, is that offshore integrated  
3 connected windmills, at least by the timeframe 2030  
4 to 2050, is a feasible alternative to nuclear power.  
5 That is your position, I think.

6 MR. GUNTER: I think it is defined by  
7 NEPA that NEPA asks the agency to reasonably  
8 foresee, and, you know, to look at reasonable  
9 alternatives.

10 CHAIRMAN RYERSON: I'm not -- excuse me.  
11 I am not asking for what NEPA requires. I am asking  
12 for what your factual position is on the viability  
13 of offshore wind power.

14 MR. GUNTER: Right.

15 CHAIRMAN RYERSON: And I am -- I think  
16 your papers say -- I am just really trying to  
17 confirm this for purposes of argument -- that you  
18 would say that it is a feasible alternative, it is a  
19 possible alternative, within the range of  
20 reasonableness -- that is your position -- at least  
21 by the 2030 to 2050 timeframe. As a matter of fact,  
22 I am going to tell you that is your position, if you  
23 don't mind. I think that you assert that. It may  
24 be true, it may not be true, but that is your  
25 assertion.

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1                   And I am also, frankly, telling you that  
2                   today, 2010, windmill power -- offshore windmill  
3                   power in the North Atlantic is not a feasible  
4                   alternative, because it doesn't exist. And so my  
5                   question is: what is the earliest date by which you  
6                   think offshore wind power would be actually  
7                   deliverable as a feasible baseload alternative?

8                   MR. GUNTER: Well, I think that we have  
9                   established by our exhibit from the University of  
10                  Maine that -- I think if the Board looks at it, that  
11                  they are delivering baseload by 2015, if I can pull  
12                  up that exhibit. And I believe that Google is  
13                  similarly on a timeline to lay the initial first  
14                  phase of the offshore transmission line around the  
15                  same timeframe, although it -- you know, it is in a  
16                  different region of interest, but it is  
17                  demonstrating that the technology is there.

18                  CHAIRMAN RYERSON: Okay. So your  
19                  factual assertion, supported by 17 or 20 exhibits to  
20                  your petition, is that offshore windmill power might  
21                  well be at least a feasible alternative by as early  
22                  as potentially 2015.

23                  Now, I have a question for the  
24                  applicant, Mr. Fernandez. What standard do we apply  
25                  when we decide whether Mr. Gunter's factual

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1 assertions create a genuine dispute? And let me  
2 quote from your opposition. I think on page 4 you  
3 say, "The petitioner," and I quote, "must make a  
4 minimal showing that material facts are in dispute."

5 And on page 6 you say that, "Some sort  
6 of minimal basis indicating the potential validity  
7 of the contention," is required. And then, on page  
8 18, you say, "Petitioners have not demonstrated that  
9 baseload wind generation is a reasonable  
10 alternative."

11 Now, which of those standards applies at  
12 the contention admissibility stage, which is where  
13 we are.

14 MR. FERNANDEZ: At the contention  
15 admissibility stage, a prima facie case must be made  
16 by the applicant that the alternative that they  
17 propose is an alternative that would -- I'm sorry,  
18 the petitioner -- that the alternative is one that  
19 would result in a different outcome. It is a  
20 materiality issue as well.

21 So they make the prima facie case about  
22 the viability of the alternative based on expert  
23 reports and such, and which they have to provide  
24 support for their assertion. But at the same time  
25 they also have to show that there is some

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1 environmental superiority to the alternative that is  
2 being proposed as well by the applicant here.

3 CHAIRMAN RYERSON: Well, eventually, if  
4 they were to prevail on a contention, I believe the  
5 law is that the petitioner would have to show that  
6 offshore windmill power is a reasonable alternative  
7 that, therefore, required more consideration in the  
8 applicant's environmental report.

9 But I guess my question for you is,  
10 isn't the reasonableness -- assuming that they are  
11 -- they have reached the level of plausibility,  
12 isn't reasonableness itself then the issue for a  
13 hearing? In other words, they don't have to show  
14 that they will win the hearing in order to be  
15 entitled to a hearing, do they?

16 MR. FERNANDEZ: They do not, no. But in  
17 this case, the big gap is that, yes, there have been  
18 large volume of exhibits propounded in support of  
19 this petition. But none of those exhibits, even  
20 though large in volume, really support the assertion  
21 being posited by the petitioner, which is that an  
22 interconnected series of windfarms operated in the  
23 northeast would actually result in displacing, in a  
24 more environmentally preferable way, the license  
25 renewal of Seabrook.

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1           That is not anywhere found in the  
2 documents that they have proposed, other than in --  
3 somewhat in the words of the petitioner themselves.  
4 But it is not supported by any expert position. And  
5 if you take the time to really focus on the  
6 exhibits, they don't come to those conclusions.

7           And, in fact, in certain degrees, the  
8 exhibits conflict with those conclusions, in that  
9 they say that storage of electricity is not really  
10 keepable right now, so whether ultimately wind could  
11 be used for -- as a baseload is not really something  
12 that they -- anybody can really conclude right now.

13           The feasibility of interconnecting a  
14 series of windfarms in the northeast would require  
15 the creation of something like an ISO to coordinate  
16 the operation. So there is so much speculation upon  
17 speculation without any expert support to say -- and  
18 all this speculation is reasonably foreseeable  
19 because there is no nexus between the large volume  
20 of documents and the alternative being posited by  
21 the petitioner.

22           CHAIRMAN RYERSON: Okay. So your  
23 position, if I understand it, is when we look at all  
24 of the exhibits, and in the absence of expert  
25 support, which is, as a general rule, not necessary

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1 to support a contention, but obviously can  
2 strengthen the contention when it is there, but your  
3 view is that when we, as a Board, look at the 20 or  
4 so exhibits, that we cannot find that it is  
5 plausible that interconnected wind power would be a  
6 reasonable alternative in the timeframe that is  
7 relevant. I mean, basically, it is a question of a  
8 minimal factual standard, isn't it?

9 MR. FERNANDEZ: Correct.

10 CHAIRMAN RYERSON: Okay. Okay. Now,  
11 let me ask you your view on the timing question.  
12 You know, what period of time are we supposed to be  
13 looking at here? I suggested that it cannot be --  
14 well, it could be today, but they would obviously  
15 lose if it is today, because it is not there today.

16 But let me propose a test for you.  
17 Suppose that the Board viewed NEPA's requirements,  
18 and, therefore, the agency's environmental report  
19 requirements, as one of considering alternatives as  
20 they exist and are likely to exist. Would you agree  
21 that that is a fair formulation of the requirement?

22 MR. FERNANDEZ: I would probably --

23 CHAIRMAN RYERSON: I'll read it again.  
24 As they exist, which is presumably 2010 --

25 MR. FERNANDEZ: Right.

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1 CHAIRMAN RYERSON: -- and are likely to  
2 exist.

3 MR. FERNANDEZ: Let me take a moment to  
4 consider that for a second.

5 (Pause)

6 To a certain degree, yes, we would agree  
7 in that -- but in order to reach the conclusion  
8 about reasonable foreseeability, I think is what  
9 I'll call it, what you're talking about, with regard  
10 to alternatives during the period that license --  
11 the extended period of operations -- has to be  
12 grounded in some facts available today. It can't  
13 just be mere conjecture.

14 And, in fact, in engaging in analysis of  
15 alternatives, the application did consider offshore  
16 wind. And it came to the conclusion that offshore  
17 wind resources, while abundant, the technology is  
18 not sufficiently demonstrated at this time, and for  
19 baseload, which is the intended purpose of the  
20 application.

21 So, and none of the documents that have  
22 been used to support the petition really challenge  
23 that in any way. They do offer opinions and  
24 conjecture, but they -- prima facie, we are not  
25 asking the Board to even delve into whether the

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1 claims are with merit. They don't make enough of a  
2 showing to even call that into question.

3 CHAIRMAN RYERSON: Okay. Thank you. I  
4 think we understand your position on that.

5 I have, Mr. Fernandez, I think one more  
6 question for you, and that is you assert that an  
7 interconnected system of wind generation would not  
8 constitute a single discrete source of power. And  
9 since we are, to some extent, speculating about what  
10 sort of wind system might exist, isn't that a fact  
11 question? Wouldn't that -- if we got that far,  
12 wouldn't that be a fact question as to whether the  
13 system that might exist would in fact qualify as an  
14 integrated single source?

15 MR. FERNANDEZ: Well, you have to look  
16 at the face of the contention. And the face of the  
17 contention, that is what the petitioners are talking  
18 about, an interconnected series of windfarms. That  
19 is -- I don't think anybody controverts that that is  
20 what they are talking about.

21 So the next level of inquiry at the  
22 contention pleading stage is whether the way that  
23 they have presented their contention really creates  
24 a material issue for the adjudication. And, in  
25 fact, it does not. But there is a certain level of

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1 mixed law and fact finding that the Board must make  
2 at this stage, that although it is not addressing  
3 the merits, in some regard it is looking at the face  
4 of the petition to address certain facts that are  
5 pled.

6 CHAIRMAN RYERSON: As to a certain  
7 minimal plausibility.

8 MR. FERNANDEZ: Correct.

9 CHAIRMAN RYERSON: I agree with that.  
10 Let me ask two quick questions of the staff, and  
11 then I will turn to my colleagues, because we are  
12 going to finish this by 10.

13 Ms. Spencer, if you could confirm for me  
14 the status -- the status of the GEIS, the generic  
15 environmental impact statement, now that -- that I  
16 believe, which is -- was created in the mid-1990s,  
17 concludes that wind power is not a viable baseload  
18 alternative. But that is not binding on this Board,  
19 is that correct? Or do you have a different  
20 position?

21 MS. SPENCER: Yes, that's correct. The  
22 current version of the GEIS, or G-E-I-S, generic  
23 environmental impact statement, was published in  
24 1996. And it does -- that is correct, but it -- you  
25 are correct on all points, that it does say wind is

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1 not a viable baseload alternative, but you are also  
2 correct that it is not binding on the Board, because  
3 each site-specific -- there isn't a requirement that  
4 the staff consider alternatives when it prepares its  
5 site-specific environmental impact statement for  
6 each site.

7 CHAIRMAN RYERSON: Okay.

8 MS. SPENCER: There is no generic  
9 finding that is binding and put into Part 51, that's  
10 correct.

11 CHAIRMAN RYERSON: Thank you. And then,  
12 I have one question about a case that you cited, and  
13 this is always a lawyer's worst nightmare, to be  
14 asked about a specific case on oral argument.

15 But you cite the Supreme Court decision  
16 in Kleppe v. Sierra Club for the proposition that --  
17 for the timing proposition that we were talking  
18 about earlier, that an environmental report or an  
19 environmental impact statement needs only consider  
20 the present day reasonable possibilities.

21 And I read that case, and I thought that  
22 it dealt with the timing of when the EIS must be  
23 prepared, but I didn't see anything in that case  
24 that spoke to the requirement, if any, or that the  
25 EIS, or in this case environmental report,

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1 anticipate the future. And I don't know if you can  
2 speak to that, or if you want to look at -- try to  
3 find occasion at the break and speak to it, but are  
4 you able to address that question now?

5 MS. SPENCER: Your Honor, is the  
6 question whether it addresses --

7 CHAIRMAN RYERSON: Whether it -- yes,  
8 you cite it for the proposition that it addresses  
9 the timeframe that is relevant to the environmental  
10 report. And I don't see that in the case, but maybe  
11 I'm missing it.

12 MS. SPENCER: I believe we did that  
13 because at this juncture the ER is standing in for  
14 the supplemental environmental impact statement,  
15 because one hasn't been prepared yet. So the  
16 alternatives analysis that will be used in the EIS  
17 needs to be prepared when a project is proposed at  
18 this time, so the --

19 CHAIRMAN RYERSON: Oh, I understand  
20 that. But the question is, when the ER or an EIS is  
21 prepared, what is the extent to which the author  
22 needs to anticipate reasonable future developments?  
23 And I didn't see that issue addressed in the case?

24 MS. SPENCER: I can examine the case.

25 CHAIRMAN RYERSON: Okay.

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1 MS. SPENCER: I don't believe it speaks  
2 specifically to an ER.

3 CHAIRMAN RYERSON: Okay. Or an EIS. It  
4 speaks to when the EIS needs to be prepared, but I  
5 didn't see it speaking to the content of the EIS.

6 MS. SPENCER: Okay. I can look up that.

7 CHAIRMAN RYERSON: If you have anything  
8 further on that, we will give you a chance later.  
9 Just let us know.

10 Judge Wardwell, did you --

11 MR. GUNTER: Judge Ryerson?

12 CHAIRMAN RYERSON: Yes.

13 MR. GUNTER: May I quickly? I just want  
14 to draw -- with regard to your question, I would  
15 like to draw the Board's attention to our Exhibit  
16 17, I believe. But it is the Maine Offshore Wind  
17 Plan presented by the Advanced Structures and  
18 Composite Center with the University of Maine at  
19 Orono.

20 And to answer your question, it -- the  
21 plan is for the first 25 megawatts of offshore wind  
22 -- this is deep water offshore wind -- to come on-  
23 line by 2014, the first 500 to 1,000 megawatts of a  
24 commercial farm to come on-line by mid-2016, and, by  
25 the beginning of 2020, additional 500 to 1,000

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1 megawatt farms with a goal of 5,000 megawatts by  
2 2030.

3 So, by 2030, the plan that is  
4 aggressively being pursued by the State of Maine, in  
5 conjunction with the Department of Interior and the  
6 Department of Energy, is to have five gigawatts of  
7 wind generating and transmitting in the region of  
8 interest. And all I would simply point out is that  
9 none of this is in the applicant's ER. It is --

10 CHAIRMAN RYERSON: Yes, you have made  
11 that --

12 MR. GUNTER: -- and it's not there.

13 CHAIRMAN RYERSON: You have made that  
14 point, I believe, in the pleadings.

15 MR. GUNTER: And it should be there, we  
16 believe.

17 CHAIRMAN RYERSON: Yes, you have made  
18 that point. Thank you, Mr. Gunter.

19 Judge Wardwell?

20 JUDGE WARDWELL: Yes, Mr. Gunter, let me  
21 -- let's follow up on that, if I might. Can those  
22 windfarms off the coast of Maine, with that number  
23 of megawatts that is going to be generated, provide  
24 baseload power that could supplement what is being  
25 proposed by the applicant in the license renewal of

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1 Seabrook, in and of itself?

2 MR. GUNTER: Well, by 2030, the plan is  
3 that it will be transmitting into the region of  
4 interest, by 2030, five gigawatts of wind. That is  
5 just for the State of Maine.

6 Again, the applicant did not address  
7 Massachusetts or Rhode Island or any of the other --

8 JUDGE WARDWELL: That's not my question.  
9 But that -- within the region of interest, or  
10 influence -- I forgot what the I really stands for.

11 MR. GUNTER: Okay.

12 JUDGE WARDWELL: Can one set of  
13 windfarms provide baseload power?

14 MR. GUNTER: That's -- that is the plan,  
15 yes.

16 JUDGE WARDWELL: That isn't my question.

17 MR. GUNTER: That is -- yes.

18 JUDGE WARDWELL: Can it provide it? How  
19 can it provide it when in fact the wind, as it is  
20 probably the last few days, completely calm out  
21 there?

22 MR. GUNTER: Well, I think, again, the  
23 exhibits that we have provided verify that in fact  
24 the -- because they are interconnected --

25 JUDGE WARDWELL: Okay. That's the

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1 point. They have to be interconnected --

2 MR. GUNTER: Yes, sir.

3 JUDGE WARDWELL: -- in order to succeed.

4 MR. GUNTER: And certainly that --

5 JUDGE WARDWELL: Are those  
6 interconnections within the region of interest,  
7 then?

8 MR. GUNTER: Yes. They would connect  
9 the farms.

10 JUDGE WARDWELL: Okay. What would your  
11 position be, Mr. Fernandez, in regards to the region  
12 of interest for the evaluation needed for this ER  
13 and the EIS?

14 MR. FERNANDEZ: Our position is that  
15 this is just baseless speculation.

16 JUDGE WARDWELL: That's not my question.  
17 My question is: what is your position on the region  
18 of interest that would -- that you would consider  
19 for the alternatives that you are evaluating in your  
20 ER?

21 MR. FERNANDEZ: We consider the New  
22 England territory.

23 JUDGE WARDWELL: So by saying that, are  
24 you saying that by interconnecting you are going  
25 beyond the region, because it would have to

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1 interconnect, as I understand it, with other  
2 windfarms along the east coast to pick up the wind  
3 where it is blowing in those timeframes when the  
4 windfarms along the immediate coastline of New  
5 England aren't functioning because of the high  
6 pressure system that exists over there as of the  
7 last few days?

8 MR. FERNANDEZ: Yes, Your Honor, that is  
9 correct.

10 JUDGE WARDWELL: May I go back to Mr.  
11 Gunter? Is -- in fact, isn't there a time when all  
12 of those windfarms wouldn't be producing also? I  
13 mean, because the east coast this whole past few  
14 days were under a severe high that --

15 MR. GUNTER: Right.

16 JUDGE WARDWELL: -- had very little  
17 wind.

18 MR. GUNTER: Well, again, the region of  
19 interest, as defined by this application, is from  
20 Maine to Rhode Island. So we are looking at a very  
21 large area that, you know, I would say is not  
22 becalmed all the time. But, you know, the question  
23 is not --

24 JUDGE WARDWELL: Let me just -- if you  
25 don't mind, I'd like -- we have limited time, and I

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1 would like to ask questions to make sure that I know  
2 what I am dealing with --

3 MR. GUNTER: Okay.

4 JUDGE WARDWELL: -- when I am making a  
5 decision here.

6 MR. GUNTER: But I -- the technical  
7 evaluation is -- has been made that it is feasible  
8 to deliver baseload power from the Gulf of Maine.  
9 That is what the University of Maine, Department of  
10 Interior, and Department of --

11 JUDGE WARDWELL: And they are saying  
12 that they can do that even when the wind is not  
13 blowing out there.

14 MR. GUNTER: They are saying that the  
15 entire Gulf of Maine is not likely to be becalmed.

16 JUDGE WARDWELL: And you don't think  
17 that took place these last few days with the high  
18 pressure that is sitting out there.

19 MR. GUNTER: I think that, you know,  
20 that is certainly -- that is certainly part of the  
21 consideration that they have made in the Governor's  
22 Ocean Energy Task Force, that, you know, says that  
23 it is reasonable and appropriate to proceed on five  
24 gigawatts of baseload wind from the Gulf of Maine.

25 JUDGE WARDWELL: And that the

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1       reasonableness and properness of "to proceed" is to  
2       proceed with what, with trying to develop whether or  
3       not this is going to be a viable alternative, is  
4       that correct?

5               MR. GUNTER: Well, to proceed with a --  
6       in coordination with the Department of Energy's plan  
7       for anywhere from 20 to 30 percent of the nation's  
8       energy supply being supplied by wind. So it -- the  
9       feasibility is their determination for it to deliver  
10      reliable baseload to the State of Maine and for  
11      export -- export into the region of interest.

12             JUDGE WARDWELL: Thank you, Mr. Gunter.

13             Mr. Fernandez, do you consider  
14      yourselves leaders in wind power as alleged by the  
15      petitioners at page 28 of their petition?

16             MR. FERNANDEZ: NextEra Energy, Inc.,  
17      the parent company for NextEra Energy Seabrook, is  
18      the largest operator of nuclear -- I'm sorry, of  
19      solar and windfarms, and the third largest operator  
20      of nuclear powerplants. So we do consider ourselves  
21      the leader in the renewables industry.

22             JUDGE WARDWELL: Is that for both  
23      offshore and onshore, or only onshore windfarms?

24             MR. FERNANDEZ: Onshore wind.

25             JUDGE WARDWELL: Have you developed any

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1 offshore windfarms?

2 MR. FERNANDEZ: We have not, because we  
3 believe the technology is unproven.

4 JUDGE WARDWELL: Do you agree that the  
5 advances in funding and activity associated with  
6 developing that technology has changed rapidly  
7 within the last few years, and certainly even the  
8 last few months? Has the interest in offshore wind  
9 changed dramatically in the last few months, is my  
10 question?

11 MR. FERNANDEZ: The interest in all  
12 renewable technologies has increased in the last  
13 couple of years.

14 JUDGE WARDWELL: So has the interest in  
15 offshore windfarms increased dramatically in the  
16 last few months?

17 MR. FERNANDEZ: There has been interest,  
18 yes, but the -- I just want to say something about  
19 this issue. I mean, at one point in time there was  
20 speculation that there would be, you know, 30, 40,  
21 60 nuclear powerplants coming in for COLs to the NRC  
22 in the next two or three years.

23 There have been plans to build, you  
24 know, many more gigawatts of wind offshore in New  
25 England as early as in the '70s. So I think that

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1 this speculation is really -- it doesn't amount to  
2 much when it comes to --

3 JUDGE WARDWELL: Is it truly  
4 speculation, or are the petitioners asking you to  
5 extrapolate the activity that now exists to what  
6 might exist when in fact your license renewal period  
7 starts? That is what I am hearing. That is not a  
8 speculation. It is we know of -- and they have  
9 provided -- they have provided information,  
10 references, and expert opinions in regards to what  
11 is going to be taking place over the next few years  
12 in the development of offshore wind power.

13 MR. FERNANDEZ: I think that --

14 JUDGE WARDWELL: And I think they are  
15 asking now is, shouldn't that same level of activity  
16 be considered and extrapolated into the future to  
17 talk about what might be possible when you start  
18 entering your period of extended operation, and  
19 evaluate that as part of the EIS?

20 MR. FERNANDEZ: What might be possible  
21 is not the standard of the Commission and NEPA  
22 requires a license applicant to follow. It is what  
23 is reasonably foreseeable, what is feasible, what  
24 is --

25 JUDGE WARDWELL: And that's what I'm

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1 asking. Isn't -- shouldn't you be extrapolating  
2 what is reasonably feasible based on the activity  
3 that has taken place within the last few months?

4 MR. FERNANDEZ: No, because nothing that  
5 has happened in the last few months represents any  
6 commitment on behalf of anybody to build the type of  
7 alternative that they are presenting. They are not  
8 presenting that there is going to be one windfarm  
9 built in the Gulf of Maine. What they are saying is  
10 that there is going to be a highway of windfarms  
11 built along the east coast.

12 For those of us that live in the -- that  
13 have lived in the northeast, we know how hard it is  
14 to even widen a road, let alone build a transmission  
15 line, impacts to birds. I mean, that is the other  
16 thing that the petitioners did not even address.

17 They only address this as being an  
18 environmentally superior alternative with regard to  
19 Greenhouse gas emissions. They don't address  
20 impacts to threatened endangered species, aquatic  
21 resources, taking of land, impacts on the visual  
22 environment, because of the windfarms.

23 So I think to say that this is just  
24 baseless speculation is to be kind to what they have  
25 done. This is characterized --

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1 JUDGE WARDWELL: Thank you, Mr. Gunter.  
2 I get your point. It's well taken.

3 CHAIRMAN RYERSON: Judge Kennedy.

4 JUDGE WARDWELL: I mean, Mr. Fernandez.  
5 Sorry.

6 MR. FERNANDEZ: That's okay.

7 JUDGE KENNEDY: First question for Mr.  
8 Gunter. This relates to the exhibits that were  
9 provided in support of the windfarm --

10 MR. GUNTER: Yes, sir.

11 JUDGE KENNEDY: -- proposal. Let's talk  
12 first about Exhibit 1. And it speaks to using the  
13 carbon footprint as a figure of merit for the  
14 environmental impact of different alternatives. And  
15 my first question is -- well, I guess what I'm  
16 really asking you to do is kind of walk us through  
17 Exhibit 1 to make sure I understand it as well as we  
18 need to --

19 MR. GUNTER: Okay. Can I do that in  
20 general terms, without actually going to the  
21 exhibit?

22 JUDGE KENNEDY: Yes. These are going to  
23 be very general questions --

24 MR. GUNTER: Okay.

25 JUDGE KENNEDY: -- at a higher level.

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1 The first question is, the applicability of the  
2 carbon emissions data in Exhibit 1 to an offshore  
3 windfarm, is that clear from that exhibit that that  
4 data is applicable to offshore deep water -- a  
5 windfarm as well as onshore?

6 MR. GUNTER: It is relevant to the --  
7 the carbon footprint for wind, as that exhibit  
8 presents, is basically in the construction and  
9 composite materials of the windmill, because -- and  
10 I think it -- the point of the exhibit is that wind  
11 does not have a front end and back end fuel cycle,  
12 so that the exhibit demonstrates that there are  
13 clear environmental advantages to becoming more  
14 reliant upon a renewable energy source that does not  
15 have a fuel chain.

16 As the applicant has argued, you know,  
17 they try to trivialize the absence of a fuel chain  
18 carbon emission. And in fact what -- if you look at  
19 our exhibit, what Sovacool says is that the brunt of  
20 the nuclear fuel cycle's emissions are from the fuel  
21 cycle. And they will remain there for the renewal  
22 period, because they will need more fuel, and they  
23 will create more waste.

24 And so the construction emissions  
25 basically cancel each other out, we would argue, but

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1 the brunt of the -- what the exhibit demonstrates is  
2 that the brunt of the carbon emissions are from the  
3 fuel cycle for the uranium mining, milling,  
4 enrichment, fuel fabrication, and then the back end  
5 of the cycle.

6 JUDGE KENNEDY: So if I understand, in  
7 general, this exhibit is trying to put the various  
8 generation technologies on an even basis? So its  
9 operational footprint from construction through the  
10 fuel cycle, including maintenance and operational  
11 carbon emissions, is included in Exhibit 1?

12 MR. GUNTER: Yes, sir. I should say the  
13 exhibit is not specific to compare offshore and  
14 onshore.

15 JUDGE KENNEDY: I think what I'm really  
16 interested in is the deep water windfarm technology.  
17 Again, we're at an early stage, and you've got  
18 plenty of exhibits that show where we are going.  
19 When you try to put forward one of these carbon  
20 footprint type comparisons, you know, you start to  
21 think about what is included, what is not included,  
22 and you have made a very strong case for what is  
23 included in the nuclear option.

24 I am curious about the maintenance and  
25 the operational carbon footprint of the offshore

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1 windfarm. I guess just speculating myself --

2 MR. GUNTER: Right.

3 JUDGE KENNEDY: -- you know, do I  
4 envision tugboats going from windmill to windmill to  
5 windmill to do maintenance? It seems to me that the  
6 onshore windfarms have demonstrated a need for  
7 regular maintenance, and now we have added  
8 complexity of deep water windfarms. And I am just  
9 -- I am going to study Exhibit 1, but that is kind  
10 of what I am looking for, to see --

11 MR. GUNTER: Okay.

12 JUDGE KENNEDY: I mean, this is a strong  
13 case in terms of carbon footprint. But we always  
14 struggle to make sure it is on an even footing, that  
15 -- you know, that --

16 MR. GUNTER: Right.

17 JUDGE KENNEDY: -- what has been  
18 critical of the nuclear option, that if there is  
19 weaknesses in other options, that we explore that.  
20 So, I mean, if you have a comment on that --

21 MR. GUNTER: I think what -- you know,  
22 we would ask the Board to check our math. But the  
23 -- obviously, the -- if you take the maintenance and  
24 operational emissions from wind and then -- and then  
25 look at the -- you know, offset that with the

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1 maintenance and operational emissions from nuclear,  
2 given the fuel -- given the absence of a fuel cycle  
3 for wind, there is still five times more emissions  
4 from the nuclear cycle.

5 JUDGE KENNEDY: So if I understand your  
6 Exhibit 1 -- and, again, I'm allowing both of us to  
7 generalize --

8 MR. GUNTER: Thank you.

9 JUDGE KENNEDY: -- it is the entire  
10 operation from construction right through  
11 decommissioning, including the fuel cycle.

12 MR. GUNTER: Yes.

13 JUDGE KENNEDY: And the same would be  
14 true for the offshore, its construction,  
15 maintenance.

16 MR. GUNTER: Yes, sir. And I was -- the  
17 maintenance piece for land includes, you know,  
18 vehicles going from wind turbine to wind turbine.

19 JUDGE KENNEDY: Appreciate that.  
20 Thanks.

21 Another question. We talked a bit  
22 before -- and I'm not going to go into it -- I'm  
23 going to sort of maybe go -- expand on it a little  
24 bit, the idea of GEIS and a single site source of  
25 alternative energy. I think Judge Ryerson brought

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1 that up. I think that has been discussed in the  
2 context of GEIS.

3 I guess I would like to take it a step  
4 further. If we put aside all the discussions about  
5 region of interest and what should be included, what  
6 I see on the proposal or on the proposed alternative  
7 is a broad transmission system off the coast that  
8 tries to deal with the vagaries of the wind.

9 I guess what I'm wondering in my own  
10 mind -- and I'm going to ask you, Mr. Gunter, and  
11 maybe turn to Mr. Fernandez, what -- from NextEra or  
12 Seabrook's perspective, why this doesn't look like  
13 just a big purchased power option. I mean, to them  
14 there is this additional transmission system off the  
15 coast that is an alternative provider of energy to  
16 potentially replace Seabrook.

17 And I guess I'm interested in your  
18 thoughts on, as an alternative, why that wouldn't  
19 look like a purchased power option to the applicant.  
20 And then I will ask the same of Mr. Fernandez.

21 MR. GUNTER: Well, let me start by  
22 saying, first of all, I understand that Central  
23 Maine Power is constructing a \$5 billion north-south  
24 transmission line now to pick up renewable  
25 alternatives for transmission to the region of

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1 interest. So there is in fact an active  
2 development.

3 As to your question on the purchased  
4 power, I would like -- first, is it possible that we  
5 could provide the Board in written comment, in seven  
6 days, with regard to your question? Is that  
7 allowable?

8 CHAIRMAN RYERSON: Is there any  
9 objection to that on anyone's part?

10 MR. FERNANDEZ: Can we get -- can that  
11 be restated, please?

12 MR. GUNTER: Would the Board be amenable  
13 to providing the question to all parties, and give  
14 us seven days -- or, you know, address it to us and  
15 give us seven days to address it in written comment?

16 (Pause)

17 CHAIRMAN RYERSON: I think, Mr. Gunter,  
18 that Judge Kennedy is satisfied that he is going to  
19 get the answers he is looking for now. We don't  
20 really want to get into a position where every open  
21 question -- potentially open question results in  
22 more filings, and then we have to give people time  
23 for additional filings. So --

24 MR. GUNTER: Right. Would you mind  
25 restating the question for me, please?

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1 JUDGE KENNEDY: Right. Because I think  
2 we are taking it -- I am really just trying to take  
3 a step back from this and explore -- explore whether  
4 -- this is not an alternative that hasn't already  
5 been considered by the applicant, because if I step  
6 back from all the exhibits -- and let's posit that  
7 there is a windfarm off the coast connected by a  
8 large transmission system.

9 In essence, the applicant is just going  
10 to buy power from that transmission system. And so  
11 I am wondering -- I am really looking for your  
12 thoughts on why that wouldn't look just like a  
13 purchased power option as an alternative in their  
14 current ER. So what really is different about this?

15 MR. GUNTER: Well, I mean, I think,  
16 first of all, the ER doesn't even -- it doesn't even  
17 address transmission of the alternative. I believe  
18 what the only -- the only thing that the applicant  
19 addresses in their environmental report is storage  
20 through compressed air, and they dismiss the  
21 alternative as unreasonable and uneconomic based  
22 upon a cursory assessment of the storage of offshore  
23 wind -- actually, of wind in general. But so, in  
24 fact, they -- the ER doesn't even address  
25 transmission.

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1 JUDGE KENNEDY: I guess what I'm --  
2 maybe what you're saying is that this is not a  
3 purchased power type option, that this is another  
4 alternative in addition to purchased power that the  
5 applicant needs to consider. And I guess, unless  
6 I've confused Mr. Fernandez, it -- could you comment  
7 on the purchased power option alternative in the ER  
8 and how this windfarm would look to the applicant as  
9 an alternative? I mean, is it truly yet another  
10 alternative and should be considered as such?  
11 Forgetting the feasibility argument --

12 MR. FERNANDEZ: Right.

13 JUDGE KENNEDY: -- for now.

14 MR. FERNANDEZ: The way you have posited  
15 the question, yes, it would have been already  
16 considered under the power purchase option that was  
17 analyzed in the environmental report.

18 This whole discussion -- I know your  
19 question seems a little more towards the  
20 application, and it reminds me of two cases that the  
21 Commission has on alternatives -- well, one  
22 Commission case, one D.C. Circuit case, the Busey  
23 case and the HRI case, where the NRC and HRI looked  
24 at what were the number of alternatives, and what  
25 did it mean to look at reasonable alternatives. And

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1 I think that case is instructive in this regard.

2 And Busey, then Judge Thomas, now  
3 Justice Thomas, for the D.C. Circuit, in looking at  
4 the siting of an airport, was also struggling with  
5 the issue of, how many alternatives is enough, and  
6 whether, you know -- what is a reasonable number of  
7 alternatives. In this regard, we are not -- the  
8 alternative, as presented by the petitioner,  
9 requires the actions of various actors, and, as  
10 their pleadings state, even the creation of  
11 something like an ISO to make sure that this  
12 happens.

13 NextEra Energy Seabrook is not capable  
14 of achieving that on its own. So the only way that  
15 we would be able to achieve something like what they  
16 have said is to buy power from it. And that has  
17 already been considered in the environmental report.

18 JUDGE KENNEDY: That is the what I'm  
19 trying to get at here is, from NextEra's  
20 perspective, what -- how should this windfarm  
21 project be viewed? I mean, it is an alternative.  
22 There is no doubt in my mind it is an alternative  
23 for generation. The question is: how should it be  
24 -- in your view, how should it be included in the  
25 environmental report?

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1 MR. GUNTER: Well, Judge Kennedy, I  
2 think that the question, at least -- I'm really  
3 appreciative of your indulgence of pro se  
4 involvement here, and you are kind in letting me  
5 struggle through this.

6 But what I understand is before us today  
7 is, is an environmental report regarding the  
8 National Environmental Policy Act, that seeks to  
9 drive this agency, whose primary licensing  
10 responsibility is nuclear, to look beyond the  
11 nuclear licensing issue and to look at the  
12 alternatives that are less harmful.

13 And so that is the driving question  
14 right now is -- and not to necessarily perpetuate a  
15 current business deal that may not be in the best  
16 interest of the environment. And so the -- my  
17 understanding is is that the windmills that are --  
18 or the wind turbine farms that are under development  
19 in the Gulf of Maine, part of their feasibility  
20 study is that there will be customers.

21 And so, you know, whether or not -- you  
22 know, it's not -- it's not our interest to preserve  
23 Seabrook and protect it from competition from less  
24 harmful generators. So -- but, again, I think that  
25 the question before the Board is -- has to do with

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1 the environmental report and driving this question  
2 of how to promote a less harmful alternative for  
3 this requested licensing action.

4 JUDGE KENNEDY: And appreciate it -- I  
5 am struggling with it myself, and so that is why I  
6 have tried to start a little discussion here -- is  
7 how in this context alternatives are to be viewed?  
8 I mean, I think, you know, we have all been back and  
9 forth, and there is plenty of paper filed on this  
10 stuff. And I myself am struggling with, should an  
11 offshore windfarm be opened up as an alternative to  
12 Seabrook station?

13 MR. GUNTER: Well, again, I think that,  
14 you know, as our contention argues, this is -- it is  
15 what is required under the National Environmental  
16 Policy Act to promote and protect the environment.

17 JUDGE KENNEDY: I appreciate that.  
18 I don't think I have any further  
19 questions.

20 CHAIRMAN RYERSON: Thank you, Judge  
21 Kennedy.

22 Let's move along to the next petition,  
23 the other petition by Friends of the Coast and New  
24 England Coalition. I believe Judge Wardwell had  
25 some questions that relate not to a specific

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1 question -- specific contention, but more of a  
2 general nature to start.

3 JUDGE WARDWELL: In fact, I may phrase  
4 that as I've got some questions for both Friends and  
5 for staff that I feel relate to all the contentions.  
6 So we will discuss them as a general aspect rather  
7 than not relating to any of them.

8 And I will start with you, Mr. Shadis.  
9 Both your petition and your reply came in somewhat  
10 beyond the deadline. If one views that as being  
11 non-timely, certainly one of the issues that would  
12 be balanced under 309, 2.309(c), is -- little Roman  
13 numeral eight that deal with evaluating what  
14 assistance you might be able to provide in  
15 developing a sound record.

16 And as part of that I think your  
17 experience plays into that. And so what I was  
18 really interested in is exploring your experience a  
19 little bit in dealing with NRC regulations in the  
20 past. Would you mind just briefly summarizing, as  
21 quick as possible, what that is from the various  
22 cases you have been involved with throughout your  
23 history?

24 MR. SHADIS: With respect to keeping  
25 schedules or --

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1 JUDGE WARDWELL: With respect to dealing  
2 -- how much experience do you have with dealing with  
3 NRC regulations? When did you first look at a  
4 regulation and comment on it before anyone at the  
5 NRC, at a public presentation, a workshop, whatever?  
6 It makes no difference.

7 MR. SHADIS: Sure.

8 JUDGE WARDWELL: Not the technical  
9 aspect so much as part of looking at the regulations  
10 as it applies to technical aspects in your past  
11 history.

12 MR. SHADIS: I and Friends of the Coast  
13 were deeply involved in the independent safety  
14 assessment that was done at Maine Yankee in 1996.

15 JUDGE WARDWELL: So that's when you  
16 first started looking at NRC regulations.

17 MR. SHADIS: Yes, sir. That was the  
18 onset of it.

19 JUDGE WARDWELL: Do you have any idea  
20 how many filings you have made over the years since  
21 '96? So that has been, what, some 10, 14 years of  
22 experience with this?

23 MR. SHADIS: Yes, sir. I would say in  
24 the range of 100 or more.

25 JUDGE WARDWELL: So quite a few.

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1 MR. SHADIS: Yes, sir.

2 JUDGE WARDWELL: You are fairly  
3 experienced with the NRC regulations.

4 MR. SHADIS: That's -- for a pro se  
5 litigant, yes.

6 JUDGE WARDWELL: Well, in fact, isn't it  
7 about time maybe we drop this pro se, oh poor old  
8 me, with the experience that you have? We don't --  
9 you don't have to answer that.

10 MR. SHADIS: Well, it's --

11 JUDGE WARDWELL: That's a rhetorical  
12 question.

13 MR. SHADIS: It's the way you  
14 characterized it I was struggling with. I think it  
15 -- attorneys might be miffed if I were to assume  
16 equestrian status with them.

17 (Laughter)

18 JUDGE WARDWELL: That's correct. We  
19 don't want to miff attorneys either, do we?

20 MR. SHADIS: No.

21 JUDGE WARDWELL: No, we don't.

22 MR. SHADIS: My wife is one.

23 JUDGE WARDWELL: Well, I -- with that  
24 experience, could you cite any examples where you  
25 have filed well in advance and not at the last

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1 minute? And I'll define the "last minute" as  
2 anything past the normal working hours of the day  
3 it's due?

4 MR. SHADIS: No, I can't. I don't think  
5 -- I doubt that there is -- at least not in the term  
6 of our acquaintance, Judge Wardwell, not in the last  
7 six years or so.

8 JUDGE WARDWELL: So that is kind of your  
9 modus operandi, then, is to pull things together at  
10 the last minute, is that what you are saying?

11 MR. SHADIS: My modus operandi is to be  
12 constantly working in overloaded condition. Most of  
13 my hours are donated hours. There is -- trying to  
14 catch a livelihood on the side. And the nuclear  
15 industry has embraced this initiative for power  
16 uprates and for license extension in New England in  
17 a big way. And it is kind of -- as a member and an  
18 officer of New England Coalition, and Friends of the  
19 Coast, it is our backyard.

20 So, really, it is not our choice to  
21 engage -- these licensing actions, in a sense, have  
22 been imposed on us, and there is a lot of it. So,  
23 you know, I would just plead basically overload.

24 And the other factor, in terms of the  
25 filings in this particular case, is that we switched

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1 to the all-electronic filing. In the first  
2 instance, the defect --

3 JUDGE WARDWELL: I don't want to take  
4 the time to get into --

5 MR. SHADIS: Okay, sure.

6 JUDGE WARDWELL: I understand that.

7 MR. SHADIS: Yes.

8 JUDGE WARDWELL: We understand the  
9 glitches that happened and are sympathetic to it,  
10 but, likewise, I am exploring more now the more  
11 global issue of whether or not, as we move forward,  
12 this continues to happen, and to see if you  
13 understand the burden that it places on both this  
14 Board and the other parties to this Board in regards  
15 to the time consumed from both the lateness and what  
16 appears to be reviewing this, some other errors in  
17 your submittals that make it hard to interpret what  
18 you are trying to say. And we are trying to  
19 understand what you are trying to say to give you a  
20 fair shake at that.

21 In your last submittal, I think you  
22 stated -- and I quote -- "Friends/NEC will make  
23 every effort to see that all future filings will be  
24 made well in advance of the deadline."

25 MR. SHADIS: Yes, sir.

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1 JUDGE WARDWELL: Do you remember saying  
2 that? What do you mean by that? "Well in advance,"  
3 does that mean 8:30 at night as opposed to 11:30 at  
4 night, or does that mean --

5 (Laughter)

6 -- noon of the day, or even possibly,  
7 gosh forbid, the day before?

8 MR. SHADIS: Well, I think it is in the  
9 gosh forbid department that we are looking -- the --  
10 what we pledge is to be certain to file a day in  
11 advance of the deadline. I think that would  
12 eliminate the kinds of electronic transmission  
13 issues that we have had that have made us 10 minutes  
14 late two filings consecutively.

15 JUDGE WARDWELL: And do you think some  
16 of that time also would be set aside to proof your  
17 submittals to assure that they are to the degree,  
18 because we will, as we move through the day here,  
19 point out some discrepancies that don't make sense,  
20 because we wanted to get them straightened out. And  
21 I'll do a couple here now, but I -- that certainly  
22 would help, because those other errors do place a  
23 burden, and I'm seeking that.

24 And let's go to the Blanche declaration  
25 now that we got for this. And in your reply, under

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1 Contention 1, inadmissible cables, on page -- you  
2 don't have to look this up. I will -- trust me,  
3 and, if I'm wrong, then you can come back at me, but  
4 --

5 MR. SHADIS: I will trust you, yes.

6 JUDGE WARDWELL: You know, on page 10 of  
7 your reply, I think you referenced that the -- your  
8 -- the declarant had stated that he had read the  
9 license renewal application for Seabrook. Can you  
10 point out where he has said that in his declaration?

11 MR. SHADIS: Well, without looking at  
12 the declaration, no. I mean --

13 JUDGE WARDWELL: You say he did, but I  
14 don't -- I don't see it anywhere. And if you can  
15 come back later, after the break, and let us know  
16 where that is, we would -- I would appreciate it.

17 MR. SHADIS: Yes, I think the licensee  
18 has criticized it, because, in fact, in Mr.  
19 Blanche's declaration it reads that he has read both  
20 the LRA and the SER. And I think that the -- this  
21 is a product of poor editing.

22 JUDGE WARDWELL: Yes. I believe it's on  
23 page 7, paragraph 9 of Blanche says, "A diligent  
24 review of the license renewal application and the  
25 NRC staff's SER finds no TLAA or AMP. Thus, I am

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1 led to conclude that the LAR is inadequate." And it  
2 finishes up.

3 MR. SHADIS: Right.

4 JUDGE WARDWELL: How could such a  
5 statement be made if an SER hasn't even been  
6 submitted?

7 MR. SHADIS: The --

8 JUDGE WARDWELL: Prepared yet?

9 MR. SHADIS: Right. The Licensee asked  
10 that question justifiably and the fact is that as I  
11 said earlier we are confronted with a number of  
12 industry initiatives in which we have intervened.  
13 And a good deal of the matter in each of these cases  
14 is transferrable.

15 That phrase was inadvertently  
16 transferred from rough draft. And we were dealing  
17 in the language and in the world of another  
18 proceeding. So it was inadvertently included. But  
19 the fact is that Mr. Blanche I know for a fact has  
20 read the LRA and has commented on it to me  
21 extensively plus what, of course, he put in his  
22 declaration.

23 JUDGE WARDWELL: And he prepared his  
24 declaration and did sign that declaration. Is that  
25 correct?

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1 MR. SHADIS: That is correct.

2 JUDGE WARDWELL: I think going along  
3 those same lines I think in your reply you made the  
4 statement that you apologize for having the wrong  
5 page numbers. You were referring the wrong page  
6 numbers. And when we get to the actual specific  
7 contentions I'll probably bring that up again if  
8 time permits.

9 MR. SHADIS: Sure.

10 JUDGE WARDWELL: But I question whether  
11 or not it was truly a page number or whether it was  
12 the wrong applicant because you were referencing a  
13 section and a page number that didn't exist. But  
14 you look confused. So I'll wait until we get to  
15 that.

16 MR. SHADIS: I would have to look at the  
17 specific text.

18 JUDGE WARDWELL: I'll bring that up  
19 later.

20 MR. SHADIS: All right.

21 JUDGE WARDWELL: These and other errors  
22 that I see in there do place a burden. And I was  
23 wondering if you could provide with any reason why  
24 you think it would be fair for us to subject the  
25 other parties to this proceeding to the extra time

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1 it really takes that I feel I need to take alone  
2 dealing with your filings and trying to sort them  
3 out. Why should we subject the others by allowing  
4 you to proceed in this process?

5 MR. SHADIS: I think it has to be  
6 weighted against our potential contribution to the  
7 record. And I think that at least in terms of New  
8 England Coalition and Friends of the Coast has not  
9 intervened in some time, not since '99 I think. But  
10 at least in terms of New England Coalition and my  
11 representation there, we have progressed through two  
12 proceedings, the Vermont Yankee LRA and also their  
13 extended power uprate and in both cases the Board  
14 found that conditions on the license amendment were  
15 in order. And they did so because of material that  
16 New England Coalition brought forward.

17 I apologize for the disorderly nature of  
18 our filings. We will work diligently to make sure  
19 that that is eliminated or at least minimized. But  
20 I do think that in terms of standing that our  
21 ability to contribute to the record has been proven.  
22 And I think it's been of value by the way not only  
23 to the panels but also to the licensees.

24 JUDGE WARDWELL: Thank you, Mr. Shadis.

25 CHAIRMAN RYERSON: Mr. Shadis, a little

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1 historical information which shows my age I think.  
2 Until about 40 or 50 years, there weren't such  
3 things as sworn declarations. There were only  
4 affidavits and this problem didn't exist. The  
5 problem was you had to find a notary public at  
6 midnight to witness the execution of an affidavit.

7 So at least for federal law purposes,  
8 that was all changed a number of years ago. But the  
9 importance of accuracy did not change because these  
10 are declarations that are subject to a penalty for  
11 perjury. And I at least treat them very seriously.  
12 I would suspect the other Board members do as well.

13 And it's not just a question of  
14 organizational niceness or wanting to comply with  
15 the rules. I think if you do not have a clear  
16 record of what a declarant has testified to in  
17 effect under oath or subject to penalty of perjury,  
18 then no matter what the Board's decision might be on  
19 appeal regardless of which side of an appeal you  
20 might find yourself. It just is not going to be  
21 sufficient for you to say "Well, but the declarant  
22 meant such and so. I know he meant such and so."

23 And so the question I have I know  
24 corrected some of the member declarations that were  
25 submitted for purposes of showing that you're

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1 authorized to represent them for standing purposes.  
2 Do you recall? Some of the individual member  
3 declarations were submitted and in a corrected form.

4 MR. SHADIS: Well, I did not correct  
5 them, sir. What I did was to refile them in an  
6 image format.

7 CHAIRMAN RYERSON: Okay.

8 MR. SHADIS: Because they were signed  
9 and typescript in the initial filing. And also in  
10 the initial filing we failed to put in the signature  
11 block that testifies that they were signed under  
12 whatever the regulations.

13 CHAIRMAN RYERSON: Has there been any  
14 resubmission of the Blanche declaration?

15 MR. SHADIS: No, sir.

16 CHAIRMAN RYERSON: Okay. So what we  
17 have in the record is assuming it's the case a  
18 declaration for example that may assert that Mr.  
19 Blanche looked at the Indian Point license  
20 application, but not necessarily this one.

21 MR. SHADIS: Well, no.

22 CHAIRMAN RYERSON: No, it doesn't. And  
23 why not?

24 MR. SHADIS: Well, the nonsensical part  
25 of it, the part that doesn't fit, is the phrase "and

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1 the staff FSPR." And that is an editorial glitch.  
2 This is -- You know we follow NRC practice in  
3 cutting and pasting.

4 CHAIRMAN RYERSON: I understand. So  
5 beyond that we are to take the Blanche affidavit for  
6 what it says in its current form because we cannot -  
7 - I don't believe that we can accept your  
8 clarification. If, in fact, that -- I have not  
9 looked right now. But if, in fact, the Blanche  
10 declaration doesn't say that he ever read this  
11 application, the application here in Seabrook, I  
12 don't think we can take your representation that  
13 "Well, he meant that. I was there with him. He  
14 talked to me about it."

15 MR. SHADIS: Right.

16 CHAIRMAN RYERSON: We don't have that in  
17 the record as a declaration. We may not need it as  
18 a declaration, but to the extent that we are going  
19 to take the Blanche declaration as partial support  
20 for your first three contentions, you're standing on  
21 the way it is right now. You're saying that there  
22 are some typos that are obvious like the SER is  
23 obviously a typo because it doesn't exist.

24 MR. SHADIS: Right.

25 CHAIRMAN RYERSON: But there's been no

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1 further corrections. So we are to take that in the  
2 form of which it exists.

3 MR. SHADIS: Well, if I may, sir. We're  
4 in luck because we have the declarant here. And  
5 there's any way that the corrections can be made  
6 now, he can take oath in your presence and --

7 CHAIRMAN RYERSON: We don't take  
8 evidence again at these proceedings. This is an  
9 effort to determine the adequacy of the pleading  
10 that was filed.

11 MR. SHADIS: Quite so. Well, to the  
12 extent that the declaration supports our contentions  
13 and that the source of the contentions needs to be  
14 verified either documents or expert testimony I  
15 think that at least to that extent we would greatly  
16 appreciate it if you would allow us to have Mr.  
17 Blanche simply authenticate his declaration or  
18 affidavit, whichever it is.

19 (Off the record discussion.)

20 CHAIRMAN RYERSON: Yes. Here, Mr.  
21 Shadis. In the interest of moving forward, if you  
22 would like to submit a revised declaration from Mr.  
23 Blanche you may do that and all of the parties who  
24 may have objections can file them as well. I would  
25 suggest that if you have such a revised declaration

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1 you file that within seven days. And the other  
2 parties if they wish to object to any corrections  
3 submit those within seven days thereafter.

4 MR. SHADIS: Thank you, sir. That would  
5 be six days by my calendar.

6 JUDGE WARDWELL: Yes. That's correct,  
7 Mr. Shadis. I will try to remember that.

8 MR. FERNANDEZ: Your Honor, may we ask a  
9 clarifying question?

10 CHAIRMAN RYERSON: I think I know what  
11 it is, but go ahead and ask it. Yeah.

12 MR. FERNANDEZ: The purpose of the  
13 revised declaration is to correct typographical  
14 mistakes. Is that the intent of the Board and not  
15 to supplement?

16 CHAIRMAN RYERSON: Well, that would be a  
17 desirable purpose. If it goes beyond that, there  
18 may -- Well, you will look at it and you will tell  
19 us what you agree with or do not agree with. But,  
20 yes, that's the -- Clearly, it is not the Board's  
21 intent to encourage the filing of a declaration that  
22 presents new arguments, new issues or whatever.  
23 It's a correction of typos, maybe some clarification  
24 or something similar to a typo has occurred.

25 And again, what's permissible is subject

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1 to the Commission's rules and case law. And if it  
2 goes beyond a mere technical correction, a typo, you  
3 have your opportunity to tell us that we can't  
4 accept that.

5 MR. FERNANDEZ: Thank you.

6 JUDGE WARDWELL: Moving on to staff if I  
7 might, Ms. Spencer. I don't know what to title this  
8 really except that it's something that has come up  
9 and it covers most of the contentions. So I'd like  
10 to address it now. And I'll start.

11 This happens to come from our first  
12 contention, inaccessible cables. And you state that  
13 you reference on page 22 that "an applicant's  
14 reference to Gall Report and statement that its  
15 program will be consistent with the Gall Report  
16 provides sufficient detail." And you reference us  
17 to see Vermont Yankee, CLI 1017 at page 46. My  
18 question to you is did the Commission say anything  
19 else about the Gall Report and how it should be  
20 judged in regards to the efficiency of the detail in  
21 that decision in Vermont Yankee?

22 MS. SPENCER: I would -- I believe --  
23 Let me look at the page that you cited. You said  
24 page 22.

25 JUDGE WARDWELL: That's correct of your

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1 answer I believe is where I got that from where you  
2 are positing that. You are making the point that  
3 the Commission has said that a reference to Gall is  
4 sufficient detail that is needed and therefore --

5 MS. SPENCER: Okay, fine. Yes, I also  
6 cited to Oyster Creek as well.

7 JUDGE WARDWELL: Well, I'll get to  
8 Oyster Creek later because that will be more  
9 specific to this contention.

10 MS. SPENCER: Okay.

11 JUDGE WARDWELL: This was a general  
12 theme that you brought up several times during your  
13 arguments that, gee, if an applicant cites to Gall,  
14 they're home free. And that's a gross exaggeration.  
15 But my question deals with you referenced Vermont  
16 Yankee at page 46. I'm asking you. Was there  
17 anything else in the Commission's decision, the same  
18 decision in Vermont Yankee, that dealt with how to  
19 deal with the Gall Report specifically on the  
20 previous page, on page I believe it was 45?

21 MS. SPENCER: If you'll give me a moment  
22 to pull it up.

23 JUDGE WARDWELL: It was on page 44 and I  
24 will pull it up for you.

25 MS. SPENCER: Okay.

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1 JUDGE WARDWELL: As you're pulling it  
2 up. Did not the Commission earlier in Vermont  
3 Yankee say "A commitment to implement an aging  
4 management program that the NRC finds is consistent  
5 with the Gall Report constitutes one method for  
6 acceptance for demonstrating the effects of aging  
7 shall be managed." But it then goes on to say "An  
8 applicant may commit to implement an AMP that is  
9 consistent with the Gall Report and that will be  
10 adequately managed aging, but such a commitment does  
11 not absolve the applicant from demonstrating prior  
12 to the issuance of a renewed license that its AMP is  
13 indeed consistent with the Gall Report. We do not  
14 simply take the applicants at its word." Didn't the  
15 Commission say that in that same decision?

16 MS. SPENCER: That is an -- Yes, I  
17 pulled it up myself and that's an accurate  
18 quotation. However, they did go on to say that the  
19 -- What it says is that it provides sufficient  
20 detail and that -- But you know the Gall Report was  
21 prepared at the request of the Commission. It was  
22 done under notice and comment type of process. In  
23 fact, the revised version of the Gall is undergoing  
24 that same process right now.

25 And that the Board, the Commission was

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1 responding to an argument.

2 JUDGE WARDWELL: Let me stop you right  
3 there if I might because I don't want to get into  
4 the details of how the Gall applies. I think we'll  
5 do that with the individual contentions. My point  
6 is that you didn't reference the fact that the  
7 Commission in that same Vermont Yankee decision said  
8 something that I think is counter to what you were  
9 trying to argue.

10 You were trying to argue that merely  
11 citing Gall was sufficient detail. And you to me  
12 were derelict in not pointing out "Oh yeah, in that  
13 same decision the Commission did say that we don't  
14 take their word for it." And so whether or not an  
15 AMP is consistent with Gall is still up for grabs.  
16 That's still debatable.

17 MS. SPENCER: Your Honor, I might point  
18 to footnote 26 of our pleading in fact where I do  
19 say that the staff does not simply take the  
20 applicant's word, that its program is consistent  
21 with Gall.

22 JUDGE WARDWELL: That's correct. And  
23 you are taking credit for doing that in that  
24 footnote. You didn't say the Commission has said  
25 that in Vermont Yankee. You said, "Oh, by the way,

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1 we as the staff." That's how I read that footnote.  
2 "Look, we as the staff have not taken their word for  
3 it on our benevolent conscious endeavor."

4 MS. SPENCER: You could say it -- You  
5 could interpret my pleading that way. However, I am  
6 citing to the Vermont Yankee decision in my --  
7 That's the decision that I'm citing to in exactly  
8 the same pages that you're talking about, pages 45  
9 and 46. So I do not -- I agree with you.

10 However, the issue here is whether they  
11 provide sufficient detail. I think you're getting  
12 to a sufficient detail by reference in Gall. And,  
13 yes, that is what the Commission has said. But we  
14 do have to verify that they are consistent with  
15 Gall.

16 JUDGE WARDWELL: Why did you not bring  
17 that up to us in your pleading?

18 MS. SPENCER: I'm confused as to why you  
19 don't think that we have.

20 JUDGE WARDWELL: Because in nowhere --

21 MS. SPENCER: Because that's a plain  
22 reading of what the Commission has said is that  
23 there is a verification. But I don't think that's  
24 what the argument that the interveners have been  
25 raising. They're saying that the application is not

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1 sufficient.

2 And what the Commission has said is  
3 referring to the Gall provides sufficient detail.  
4 If they don't believe that the applicant -- That's  
5 all they need to put in their application and that  
6 is true. And that's what the Commission has stated.  
7 But if the Petitioners believe that something in the  
8 Gall Report is insufficient, then they are free to  
9 challenge that.

10 JUDGE WARDWELL: And so the sufficiency  
11 of whether or not the applicant is consistent with  
12 Gall is still at issue. That's what the Commission  
13 is saying under Vermont Yankee. Is it not?

14 MS. SPENCER: But that's different.

15 JUDGE WARDWELL: Don't take their word  
16 for it.

17 MS. SPENCER: That's different than  
18 detail. That's a different question as I see it.  
19 It's a different question than providing sufficient  
20 detail and what's required to be in the LRA versus  
21 the sufficiency of just simply saying I'm consistent  
22 with Gall. I think the question is saying that  
23 you're consistent with Gall is sufficient.

24 The Petitioners are free to challenge  
25 the sufficiency of Gall. And they are also free to

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1 say that, you know what, in this particular case  
2 this plant has operating experience that shows that  
3 this aging management program is insufficient.

4 JUDGE WARDWELL: And so how could an  
5 applicant possibly say that they're consistent with  
6 Gall without pointing out how they're consistent,  
7 without providing those details? Are you suggesting  
8 that as you do often with these contentions that the  
9 applicant can merely say in a single sentence "We  
10 are going to prepare a plan that's consistent with  
11 Gall for all of our aging management programs." And  
12 that's the end of it.

13 MS. SPENCER: Yes, and then that is  
14 verified by the staff through onsite audits and in  
15 their preparation of their safety evaluation report.

16 JUDGE WARDWELL: And so then would you  
17 not also agree that we as an independent body must  
18 also verify that the same way you did as another  
19 party to this proceeding? And isn't that what the  
20 Commission says we must do under Vermont Yankee  
21 because in fact we are an independent board  
22 reviewing the same things that you're reviewing as  
23 one party to this proceeding?

24 MS. SPENCER: I guess this is getting to  
25 whether this is a mandatory hearing or whether this

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1 is a hearing that will be granted upon a showing of  
2 a municipal contention by a party withstanding.

3 JUDGE WARDWELL: Well, what we're  
4 getting to is how much level of detail is needed.  
5 How much does the Petitioner have to state at this  
6 point and what is legally sufficient to provide by  
7 an applicant?

8 MS. SPENCER: Okay. There are two  
9 things, what the Petitioner needs to show and what  
10 the Applicant needs to provide in their application.  
11 And the staff position whether the Board agrees with  
12 it or not is the staff's position is -- Based on our  
13 reading of Oyster Creek which came and then  
14 subsequently that we used, we actually cited Oyster  
15 Creek in our appeal of the licensing board decision  
16 in Vermont Yankee and then was followed by the  
17 Commission in the Vermont Yankee decision is that  
18 reference to Gall provides sufficient detail for  
19 Petitioners. All Applicant needs to do is reference  
20 the Gall and say that their program is consistent  
21 with Gall.

22 And then Petitioners are free to  
23 challenge the sufficiency of the Gall Program. And  
24 that is our position. And as the Commission stated  
25 that, yes, there is a verification in there. And

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1 also I guess I would point out that even if the  
2 contention is not admitted, you know the staff  
3 reviews the application, prepares the SER, goes  
4 before the Advisory Committee for Reactor  
5 Safeguards. And they are an independent body that  
6 then reviews the application and submits the report  
7 to the Commission. But that's the staff's position  
8 and I guess disagreement with the Board. But that  
9 is what our position has been.

10 JUDGE WARDWELL: And Vermont Yankee says  
11 that whether or not an applicant is consistent with  
12 Gall remains an issue. Does it not?

13 MS. SPENCER: It is -- It is not --

14 JUDGE WARDWELL: Viable issue.

15 MS. SPENCER: An issue if there is an  
16 admissible content that shows that there is some  
17 reason to believe that they are not. But a  
18 petitioner would have to come forward with that.

19 JUDGE WARDWELL: Right.

20 MS. SPENCER: Or they can challenge the  
21 sufficiency of what Gall recommends. But as a  
22 general matter, that provides sufficient detail.  
23 And if we were getting into the merits we've also  
24 made arguments about each specific contention about  
25 the level of detail that Seabrook has in fact

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1 provided.

2 JUDGE WARDWELL: Thank you, Ms. Spencer.  
3 I think I'm ready to move on, too.

4 CHAIRMAN RYERSON: We'll take a break  
5 now.

6 JUDGE WARDWELL: Yes.

7 CHAIRMAN RYERSON: All right. We are  
8 almost on schedule. Let's take an eight minute  
9 break and come back promptly at 10:50 a.m. And we  
10 look like we'll probably get done by 1:00 p.m. Off  
11 the record.

12 (Whereupon, a short recess was taken.)

13 CHAIRMAN RYERSON: On the record. Could  
14 we come back to order please?

15 (Simultaneous conversations.)

16 Welcome back. Mr. Shadis, I believe  
17 Judge Kennedy has some questions to start on your  
18 first contention.

19 JUDGE KENNEDY: Thank you. Thanks,  
20 Judge Ryerson.

21 I have just a few questions to clarify  
22 some elements of the petition. So let me start.  
23 Let me point you first to footnote 5. Okay. I'll  
24 give you a page number. It's on page 12 of the  
25 petition. Page 13, sorry. And it's really a simple

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1 question I hope.

2 (Off the record discussion.)

3 Footnote 5 states that "FP&L next error  
4 does not propose any APM to manage cables normally."  
5 And I'm struggling as to what. I'm not sure what  
6 that footnote means. So I was hoping you could  
7 clarify for us what it means to you folks. And if  
8 it's not intended to mean anything, just let me  
9 know. I'm really struggling what the Petitioner is  
10 trying to get at there.

11 MR. SHADIS: Okay. I'm trying to find  
12 out where it's referenced to.

13 JUDGE KENNEDY: It goes to the top of  
14 the page just under Supporting Evidence, the first  
15 line.

16 MR. SHADIS: I think it was intended to  
17 mean that there is not an aging management program  
18 for medium voltage cables in place. But I am  
19 uncertain of that and --

20 JUDGE KENNEDY: When you say in place,  
21 do you mean in the application?

22 MR. SHADIS: No, currently.

23 MR. SHADIS: Or currently at the  
24 station?

25 MS. SPENCER: Under normal operations

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1 now.

2 MR. SHADIS: And however I don't see the  
3 value of it now that I'm reading it and I would just  
4 rather strike it.

5 JUDGE KENNEDY: I just didn't want to  
6 miss some point that was trying to be made.

7 MR. SHADIS: Thank you.

8 JUDGE KENNEDY: I'm trying to understand  
9 the petition.

10 MR. SHADIS: This is an example of how  
11 difficult these things are to read and I apologize.

12 JUDGE KENNEDY: No, that's fair. I've  
13 got a number of these sorts of questions as I went  
14 through the petition. And I'm really asking you to  
15 help clarify some of the points that you're making.

16 MR. SHADIS: Sure.

17 JUDGE KENNEDY: On page 14, Bases 14.

18 MR. SHADIS: Yes, sir.

19 JUDGE KENNEDY: It states that "most of  
20 the inaccessible cables at Seabrook are not  
21 specified to operate in a submerged environment."  
22 Again, I'm asking to clarify what is meant by --  
23 What point is being made here?

24 MR. SHADIS: Well, this actually goes to  
25 really the heart of our contention. There's no

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1 provision in anything that the Licensee has  
2 submitted for taking cables that are not qualified  
3 to be in a wet environment or submerged and  
4 replacing them or moving them to a dry run  
5 environment. And the design criteria to and for  
6 NRC regulation basically say that whatever you put  
7 out there you've got to put out there a design to  
8 meet the environment that it's going to be in.

9 JUDGE KENNEDY: I think and what again  
10 caught my attention was "in clear of violation of 10  
11 CFR Appendix A and B." And I think there's a theme  
12 through Contention 1 that moves back and forth  
13 between normal operational issues and aging  
14 management related issues. And part of the  
15 questioning here is going to be trying to sort  
16 through that.

17 MR. SHADIS: As petitioners we really  
18 have a problem with that interface between -- And  
19 you're really not permitted to criticize the current  
20 licensing basis. That's presumed to be an order  
21 because of how wonderfully the ROP was and however  
22 that goes.

23 But the Licensee nonetheless uses that,  
24 the CLD, as a baseline and they pledge to carry  
25 conformance to the CLB into the extended period of

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1 operation.

2 And you know our contention goes to the  
3 extended period of operation. We're not concerned  
4 with whether, at least in this particular, or not  
5 they're in conformance currently. We're concerned  
6 with what they put in their license renewal  
7 application.

8 And just coming off of this question,  
9 this Item 14 here, the way it appears to us is that  
10 the license renewal application enshrines. It  
11 codifies for the extended period of operation a  
12 violation of NRC regulation. And that is knowingly  
13 leaving these cables in place when they are not  
14 qualified for the environment to which they're  
15 subjected.

16 JUDGE KENNEDY: And we're going to chase  
17 this for a while. This is to me at the heart of  
18 this contention and may even move to come of the  
19 other contentions.

20 Scope and license renewal as you point  
21 out is a complex issue to try to deal with and to  
22 focus on aging effects and what needs to be manage  
23 in a particular component and for environment gets  
24 to the heart of Contention 1 and Contention 3 in  
25 your petition. So I guess I'll ask your patience as

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1 I move through this because I know as soon as we ask  
2 Mr. Fernandez to speak we're going to have this  
3 discussion.

4 But let's just stay with the clarifying  
5 for now.

6 MR. SHADIS: Sure.

7 JUDGE KENNEDY: I mean if you recognized  
8 what you've just stated is that we are moving in  
9 between different elements of regulatory space and  
10 the focus of this proceeding is going to be in  
11 license renewal.

12 So I'm really asking for your indulgence  
13 in helping me sort through this to focus on the  
14 issues that are at the heart of this proceeding.  
15 And now we're dealing with the inaccessible cables.  
16 What I see in Basis 14 is at least an attempt to  
17 point out that there may be a current operating  
18 problem in this plant. But again, we're trying to  
19 bring that into the license renewal proceeding and  
20 talk about aging effects and what needs to be  
21 managed for these cables from an aging perspective.

22 I think and this may just continue to  
23 belabor the point. But this citation of Generic  
24 Letter 2007-01 and I think there's a -- Well, I  
25 guess bringing up the Davis Besse cable failure.

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1 I'm trying to figure out how this ties into the --  
2 And I think you're trying to tie it into the  
3 frequency of inspections.

4 But how does that enlighten us in  
5 identifying at least from your perspective a  
6 weakness in the Seabrook license renewal  
7 application? And again this moves from page 16. It  
8 really starts on page 15 and moves through 16 and  
9 17.

10 MR. SHADIS: Right. Well, I think it  
11 can be taken a couple different ways, but I think at  
12 core what we're saying is this is a real issue.  
13 This is not something that we observed with respect  
14 to Seabrook and by our own contrivance decided that  
15 it's an important issue.

16 What we're saying here is that this is a  
17 real issue that has gotten regulatory attention and  
18 that it is a serious issue. There are serious  
19 safety implications and I think that that's the  
20 reason that we included these references.

21 JUDGE KENNEDY: Okay. So again if we  
22 acknowledge the severity of the issue, can we turn  
23 to focusing on what is deficient in what Seabrook is  
24 proposing to manage this important issue? Maybe  
25 just to get it started in that regard, under Basis

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1 17, you conclude with "clearly, the LRA amp has not  
2 bounded the problem." And so it's at least alluding  
3 to a deficiency. I'm trying to figure out what in  
4 more specific terms you're trying to get at in Basis  
5 17.

6 MR. SHADIS: Well, again I think  
7 elsewhere we point out that there is no mention of  
8 eliminating the cause or at least one of the prime  
9 causes of the problem and except on an episodic  
10 basis and that is that the company basically says  
11 every so often and we're finding it hard to figure  
12 out what the period is, whether it's every six  
13 months or every six years or every year, we're going  
14 to look in the manholes onsite into the tunnels, the  
15 raceways, where these cables are and see if they're  
16 submerged. And if they are, we're going to pump the  
17 water out.

18 And that does not -- that only takes  
19 care of the water at that moment. It's uncertain as  
20 to whether it's better to leave them wet or dry them  
21 out and then wet them again and then dry them out  
22 and wet them again. I have no idea in terms of the  
23 stress on the materials.

24 But it doesn't say anything about  
25 keeping them out of the water on a regular basis.

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1 It allows for this episodic soaking. It allows for  
2 this act for whatever period of time there may be  
3 between inspections of these manholes. It could be  
4 a couple years to leave the things soak or a year or  
5 six months, whatever it is. It's in our view to  
6 simply take a look every so often to pump the water  
7 out does not bound the problem. And the underlying  
8 problem, the basic problem, is putting materials  
9 into an environment for which they're not designed.

10 JUDGE KENNEDY: And that environment is  
11 submerged or is that --

12 MR. SHADIS: Submerged or wet. And  
13 there's a -- It's not clear from what the licensee  
14 provided and we're now referring to Vermont Yankee  
15 that Vermont Yankee was very specific that some of  
16 the cables are designed for wet service but not  
17 submerged service. So they're kinda in mid space  
18 here.

19 And I've lost my train of thought having  
20 diverted.

21 JUDGE KENNEDY: But it seems to me that  
22 you're moving beyond just a frequency of inspection.  
23 The issues that you just categorized are more of a  
24 preventive nature, to prevent submersion, as opposed  
25 to identifying it and taking action which --

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1 MR. SHADIS: The periodic inspection and  
2 occasional pumping dry of the manholes is aging  
3 management in its most minimal sense. This does not  
4 -- it only provides relief for that period of time  
5 in which the cables are dry because there's nothing  
6 to prevent them from becoming wet again.

7 And so in our view it's no again  
8 management program at all. An aging management  
9 program would do something to mitigate the aging  
10 effects beyond that short period or long period,  
11 whatever it is, periodic drying of them.

12 JUDGE KENNEDY: All right. Thanks.

13 Mr. Fernandez, could you help us  
14 understand from the Applicant's perspective (a) what  
15 the aging effect is, (b) what actions are being  
16 taken to manage this aging effect beyond the  
17 inspection? If the inspection program is what is  
18 the aging management program, then could you address  
19 the sort of issues that Mr. Shadis has raised about  
20 the periodic submersion drying/wetting of the  
21 cabling?

22 MR. FERNANDEZ: With the Board's  
23 permission, Mr. Hamrick will be addressing the NEC  
24 contentions other than NEC 2 and I will address NEC  
25 2.

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1 MR. HAMRICK: Thank you. May it please  
2 the Board. Judge Kennedy asked about the aging  
3 mechanism that we're dealing with here and that  
4 really is identified in both the application and in  
5 the Gall Report on which the application is based.

6 And the Gall Report states that the  
7 problem is some cables may be exposed to  
8 condensation or wetting and that when -- and this is  
9 the current version of the Gall, Gall Rev. 1 -- an  
10 energized medium voltage cable is exposed to wet  
11 conditions for which it is not designed, water  
12 treeing or a decrease in the dielectric strength of  
13 the conductor insulation can occur. So the comments  
14 that have been made about the fact that -- and much  
15 of the petition focuses on the idea that -- it can  
16 be a bad thing for these cables to be submerged for  
17 long periods of time. And that does not represent a  
18 dispute with either the Gall Report or Seabrook's  
19 application. That's a given.

20 The purpose is, the real question is,  
21 what are you going to do about it. And the purpose  
22 of the Gall program that NextEra is implementing for  
23 Seabrook is, the focus, the heart, to prevent that  
24 submergence, at least, long term submergence over  
25 more than a few days and to have inspections which

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1 originally were no more than every two years. But  
2 now they've been shortened to no more than every one  
3 year to inspect manholes. And if you find water in  
4 those manholes, pump it out.

5 And that inspection frequency is also  
6 focused on plant specific operating experience. So  
7 if you know that there's a specific manhole that  
8 keeps getting submerged, you check it more  
9 frequently. If you know there's been a giant storm  
10 that lots of rain has come and these manholes are  
11 going to have water in them, you'll check it more  
12 frequently.

13 And both the Gall Report and the  
14 application acknowledge point that the Petitioners  
15 have raised is that --

16 JUDGE WARDWELL: Before you go on to  
17 that, can I ask a clarifying question?

18 MR. HAMRICK: Certainly.

19 JUDGE WARDWELL: Those statements that  
20 you just made in regards to the process that you go  
21 through for looking at these cables, where in the  
22 license application is that presented as an aging  
23 management program for these cables?

24 MR. HAMRICK: May I have just a moment?

25 JUDGE WARDWELL: And you can search for

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1 that later just so we don't waste time and have dead  
2 air space here. I hate to have dead air space.

3 MR. HAMRICK: On page B-181 of the  
4 application, this is the Rev. 0 so to speak, it  
5 states that the inspection focuses on water  
6 collection and manholes and drain waters as needed.  
7 The frequency for accumulative water and subsequent  
8 pumping is based on inspection results.

9 JUDGE WARDWELL: Yes. But you had much  
10 more specificity in your discussion just three  
11 minutes ago in regards to the details of this. That  
12 is what I'm after where that might be in the license  
13 application.

14 MR. HAMRICK: In the revision to the  
15 application which was filed on October 29, one of  
16 the specific changes was to say that "pumping will  
17 be based on instead of inspection results as I just  
18 said in a new plant it's based on plant specific  
19 operating experience with cabling wetting or  
20 submergence, i.e., the inspection is performed  
21 periodically based on water accumulation over time  
22 and event driven occurrences such as heavy rain or  
23 flooding."

24 So that's on page six of Enclosure 2  
25 which is the -- cables enclosure to the supplement

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1 from October 29th. So that's basically what the  
2 Petitioners both in Contention 1 and Contention 3  
3 are getting at is we want you to do what's in the  
4 draft revision of Gall Rev. 2. And we've seen  
5 that's what NextEra has committed to and has amended  
6 its application to address.

7 As I was saying earlier, the Petitioners  
8 also get to the point that just by pumping out  
9 manholes our raceway and other areas between the  
10 manholes that you may not necessarily be pumping and  
11 you may not know whether or not those cables are  
12 submerged.

13 That's again an issue that doesn't  
14 create a dispute with either the Gall Report or the  
15 application which is required under 2.309(f)(1)(6).  
16 Because that language comes out of the Gall Report.  
17 It's the Gall Report that says if you're looking at  
18 manholes there may be cables that are submerged  
19 elsewhere. And because of that, that's why this is  
20 just not an inspection program.

21 It's more than inspection. It's also we  
22 say we'll do cable testing. We will test not in-  
23 service testing as the Petitioners get to. Not  
24 testing to see does the light turn on when you flip  
25 the switch. It's condition testing. It's what is

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1 the condition, the strength or the condition of the  
2 insulation in the cables. So that is performed  
3 precisely for the purpose that we can't be 100  
4 percent assured that all of the cables will always  
5 be in a completely dry environment as they are  
6 underground and close to the water table.

7 JUDGE KENNEDY: In terms of the aging  
8 effect the Petitioners raise the issue of the  
9 wetting and drying and wetting and drying cycles.  
10 Is that a mechanism that's being managed as part of  
11 this aging management program or is it just the  
12 submergence of the cable?

13 MR. HAMRICK: Again, the purpose of, the  
14 goal is to prevent submergence so that doesn't  
15 happen. However, there is an understanding that  
16 it's going to rain. There's going to be water  
17 underground. So they will get wet. That's where  
18 the testing -- I don't believe that particular  
19 concept was necessarily raised in the petition.  
20 However, the testing of the cables addressed that  
21 very issue.

22 Regardless of whether it's from long-  
23 term submergence or repeated submergence, the  
24 problem is going to be the insulation in the cable.  
25 The problem could be -- what we're trying to address

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1 is has the insulation been degraded by this process.  
2 And that's what the cable testing is there to tell  
3 you.

4 So regardless of whether it's a long-  
5 term submergence or repeated submergence, what is  
6 the condition of the insulation? That's what we're  
7 looking for.

8 JUDGE KENNEDY: Yes. I had a follow-up  
9 question or I had a question on page 31 of your  
10 answer which talks about this in-service testing  
11 versus the condition of the insulation.

12 MR. HAMRICK: Right.

13 JUDGE KENNEDY: Is that what you're just  
14 talking about because the answer makes a long  
15 discussion about the differentiation and the  
16 significance of the differentiation between in-  
17 service testing and the condition of the insulation?  
18 Is that what you --

19 MR. HAMRICK: Absolutely right. The  
20 Blanche declaration goes into detail about the need  
21 for or about in-service testing generally and how  
22 that's called for in certain degrees and challenges  
23 to in-service testing.

24 But that's not what this program is.  
25 In-service testing means pretty much does the cable

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1 do its job. When you flip the switch, does the  
2 light on the other end come on so to speak?

3 This program is not an in-service  
4 testing program. It is a condition testing program.  
5 It tests -- The tests that are performed as the  
6 application states are proven tests to demonstrate  
7 the condition of the cable.

8 JUDGE KENNEDY: Of the cable insulation.

9 MR. HAMRICK: Correct.

10 JUDGE KENNEDY: Okay.

11 MR. HAMRICK: Again, because that's the  
12 aging mechanism that we're trying to manage here is  
13 the water screen and the degradation of the  
14 insulation of the cable. That's where the potential  
15 problem comes in. So that's what we're trying to  
16 address with the testing.

17 JUDGE KENNEDY: Okay. So the material  
18 is being managed. Is the cable insulation? I mean  
19 we keep using the words "cable" and "insulation" as  
20 interchangeable terms.

21 MR. HAMRICK: Just a moment.

22 MR. HAMRICK: The ultimate goal of the  
23 program is to protect the insulation of the cables.  
24 We sometimes say cables just as shorthand. But what  
25 we're getting at is the problem, the potential

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1 problem, could be changes in dielectric strength of  
2 the insulation of the cable.

3 JUDGE KENNEDY: Maybe I'll give Mr.  
4 Shadis an opportunity to respond to what he just  
5 heard. Well, let me just first clarify. This is in  
6 the supplement to the application. I know that it  
7 was submitted with your --

8 MR. HAMRICK: Well, the aging effect is  
9 the same regardless.

10 JUDGE KENNEDY: But the enhancements to  
11 the aging management program.

12 MR. HAMRICK: There was testing in both.  
13 And what's changed is the frequency of the testing.

14 JUDGE KENNEDY: Mr. Shadis, do you have  
15 any follow-up?

16 MR. SHADIS: Well, I do because I would  
17 like to clarify on some of the comments that the  
18 Licensee has made. There is no testing that they  
19 propose that will reveal the aging of the insulation  
20 short of failure. In other words, the insulation  
21 may be aged almost to the point of failure and there  
22 is no testing that will in their regime detect that  
23 only at the point of failure.

24 And there are safety implications for  
25 cables in that condition during operation. If there

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1 is an emergency and the cables are put into service  
2 at full amperage, then the potential for insulation  
3 failure is that much greater.

4 Their program doesn't begin to go there.  
5 When Mr. Blanche suggested or we suggested actually  
6 in our petition in-service inspection, the Licensee  
7 made that differentiation. And that would amount to  
8 testing the cables at their full load.

9 JUDGE KENNEDY: Do you believe that  
10 would --

11 MR. SHADIS: It's closer to detecting  
12 any potential insulation failure than --

13 JUDGE KENNEDY: Than the ones that were  
14 just at prior to point of failure that you pointed  
15 out.

16 MR. SHADIS: Yes.

17 JUDGE KENNEDY: Because I was going to  
18 give Mr. Hamrick a chance to respond to that. That  
19 seems very significant that point that you've raised  
20 about the condition of the insulation.

21 MR. SHADIS: We believe it is.

22 JUDGE KENNEDY: And your thought would  
23 be the in-service testing is an opportunity to  
24 address that issue.

25 MR. SHADIS: It's a step closer to

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1 revealing incipient failure. But again even though  
2 it would be the right thing to do, it still doesn't  
3 take you to the point of restoring or accomplishing  
4 the environmental qualification of these cables.  
5 They're not qualified for the service to which  
6 they're being put. And no amount of testing or  
7 inspection, water pumping, dewatering is going to  
8 affect that.

9 JUDGE KENNEDY: Thanks.

10 Mr. Hamrick.

11 MR. HAMRICK: Yes. The statements that  
12 Mr. Shadis has just stated aren't found in the  
13 petition or in the Blanche declaration. There is no  
14 support. What the Blanche declaration actually says  
15 is it quotes from NUREG CR-7000 to state  
16 "deficiencies with in-service testing." And the  
17 reason I address that is because to say those  
18 deficiencies with in-service testing don't create a  
19 dispute with this application. But this application  
20 doesn't involve in-service testing.

21 And the place in NUREG CR-7000 where it  
22 criticizes in-service testing it goes on to provide  
23 a list of testing that is better and the testing  
24 that it says is better is the type of testing that  
25 is included in this application.

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1 JUDGE KENNEDY: All right. Thank you so  
2 much.

3 CHAIRMAN RYERSON: Judge Wardwell, did  
4 you have any questions.

5 JUDGE WARDWELL: All set. Thank you.

6 CHAIRMAN RYERSON: All right. I think  
7 we can move to Contention No. 2 then and I have a  
8 few questions to start on that.

9 Actually, the first question is for the  
10 staff. So when Ms. Spencer is available.

11 MS. MONTEITH: Your Honor, I can take  
12 the question.

13 CHAIRMAN RYERSON: The question is this.  
14 Is the issue of whether transformers are active  
15 components a legal question or a factual question?

16 MS. MONTEITH: I think it's probably  
17 both. And in a legal sense it goes to whether the  
18 application is required to have an aging management  
19 plan for transformers and to require one would  
20 require them to be considered passive components.

21 CHAIRMAN RYERSON: But that's the issue.  
22 I mean, are they active or passive? Is that  
23 potentially a fact question?

24 MS. MONTEITH: It is a fact question.  
25 Well, actually the Commission did speak to how to

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1 consider a component active or passive in its  
2 statement of consideration.

3 CHAIRMAN RYERSON: I agree with you.  
4 They spoke to how to address it. But there was a  
5 1995 statement of consideration in connection with  
6 rulemaking as I recall. And that did not expressly  
7 exclude or include transformers. And then the staff  
8 issued some -- I think the staff then issued some  
9 guidance.

10 MS. MONTEITH: That's correct.

11 CHAIRMAN RYERSON: But the staff  
12 guidance is not binding upon us. Correct?

13 MS. MONTEITH: It's not binding, no.  
14 But I believe it has persuasive.

15 CHAIRMAN RYERSON: It's not binding.

16 MS. MONTEITH: Correct.

17 CHAIRMAN RYERSON: And so what we have  
18 is a Commission setting some standards that does not  
19 expressly address the subject. The staff's  
20 interpretation is certainly persuasive but not  
21 binding upon us. And why don't we have a fact  
22 question on transformers as to their status?

23 MS. MONTEITH: May I take a moment, Your  
24 Honor?

25 CHAIRMAN RYERSON: Yes.

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1 MS. MONTEITH: Your Honor, we do agree  
2 that I think it has to be to some degree fact  
3 question. But I think our primary issue with the  
4 petition that it doesn't explain, the petition does  
5 not explain, why they think it's a passive  
6 component.

7 CHAIRMAN RYERSON: Okay. Well, we'll  
8 get to that in a minute. Thank you.

9 Question for the Applicant on this  
10 contention. Mr. Fernandez, what's your response to  
11 the point that Petitioners raise? They say a nearly  
12 verbatim contention in the Indian Point license  
13 renewal matter was admitted, was both admitted as a  
14 contention and in fact survived as I understand it a  
15 motion for summary disposition. What's your  
16 response to that point?

17 MR. FERNANDEZ: As we point out in our  
18 answer a similar contention was propounded and was a  
19 contention and an endpoint. The contention in this  
20 case is not exactly the same because the declaration  
21 that supports it is not the same.

22 Additionally, the fact that a licensing  
23 board as this Board is well aware admitted or did  
24 not admit an issue for a hearing, although  
25 informative and it bears upon the Board to be aware

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1 of that stat as the Board said earlier with regard  
2 to a staff determination, it's not binding upon this  
3 Board.

4 CHAIRMAN RYERSON: No. Of course, one  
5 of the distinguished members of that board is also  
6 with us today. But you're right. You're absolutely  
7 right. It is the case that one board's decision does  
8 not bind another board.

9 MR. FERNANDEZ: And as co-counsel both  
10 just reminded me if you look also at the briefs that  
11 were filed in that proceeding the applicant there  
12 did not bring to the board's attention the fact that  
13 there was this long-standing precedent of  
14 transformers being excluded from the -- as active  
15 components. And that this was a long-standing  
16 precedent under which the Commission has already  
17 issued several license renewals in the past.

18 One question that --

19 JUDGE WARDWELL: Has the Commission ever  
20 exempted transformers from being considered as they  
21 have others?

22 MR. FERNANDEZ: Yes. That I'm aware of  
23 every single license renewal that has already been  
24 issued.

25 JUDGE WARDWELL: That's fine. But what

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1 I'm saying is have they issued a ruling where they  
2 said like batteries and relays and those other  
3 issues that they have exempted that they're  
4 exempting transformers.

5 MR. FERNANDEZ: Well, before the  
6 Commission delegated the authority to issue renewed  
7 licenses to the staff the Commission itself was the  
8 authority which acted upon the recommendation and  
9 ordered that the licenses be issued for renewal  
10 based on this analysis. So the Commission has acted  
11 in the past.

12 JUDGE WARDWELL: It would be helpful if  
13 you answer my question first. And then if you want  
14 to elaborate, do. Because I'll go back to my  
15 question again. Has the Commission ever issued a  
16 ruling exempting transformers as they have with  
17 batteries and relays and the other issues?

18 MR. FERNANDEZ: The Commission has never  
19 been represented squarely the question that you're  
20 presenting. So, no, it has never had the  
21 opportunity to opine on that issue.

22 JUDGE WARDWELL: Thank you.

23 MR. FERNANDEZ: And may I elaborate now?

24 JUDGE WARDWELL: I feel you have  
25 earlier. So I'm happy. But if you want to, it's up

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1 to the --

2 CHAIRMAN RYERSON: Continue if you want.

3 MR. FERNANDEZ: The Commission has  
4 issued renewed licenses and issued orders that  
5 included this particular issue as a transformer  
6 being an active component. Although not directly  
7 squarely in front of them, they have acted and  
8 treated at the Commission level, not the staff,  
9 transformers as active components.

10 Additionally, the question that Judge  
11 Ryerson asked the staff was whether it's a fact  
12 issue. This is a fact issue. We agree. But in  
13 order to put a fact issue into controversy the  
14 Petitioners are not relieved of their  
15 responsibilities under Part 2. And in this  
16 particular case, they clearly have not met that  
17 burden.

18 And I'm assuming that Judge Ryerson  
19 probably has some more questions to get to that  
20 issue. So I don't know if I should --

21 CHAIRMAN RYERSON: Yes. I'll go to the  
22 Petitioner with those questions actually.

23 MR. FERNANDEZ: Okay.

24 CHAIRMAN RYERSON: And I don't know if  
25 this is an issue that your corrections, potential

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1 corrections, to the Blanche declaration will address  
2 and, if so, whether it takes us over a line that we  
3 can't really let you go. But as the matter now  
4 stands I believe the Blanche declaration as well as  
5 your own pleadings seem to assert both that  
6 transformers are active and in another place  
7 passive.

8 And I assume your argument is that they  
9 are passive because that would presumably give rise  
10 to the need for an aging management program. If  
11 they're active, they are presumably examined  
12 periodically.

13 But you seem to assert both. And my  
14 question is was that a typo or am I not  
15 understanding your position?

16 MR. SHADIS: It must have been a typo.

17 CHAIRMAN RYERSON: Yes.

18 MR. SHADIS: I cannot imagine. No, our  
19 position -- and I'm sorry for the misunderstanding -  
20 - solidly is that these are passive components. And  
21 I think that it's important to distinguish them from  
22 those other components that have been relegated to  
23 either the active or routinely replaced sort of  
24 category mentioned batteries and relays. The impact  
25 of a failed transformer, depending on which of the

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1 many transformers onsite it is, can be to scram the  
2 reactor. It can result in a couple of different  
3 initiating events such as a fire or a major  
4 electrical fault transmitted back through the  
5 system.

6 So it's a large component. It is not  
7 replaced on any periodic schedule, although  
8 replacement are common. But it's not like it has a  
9 given life expectancy and then you replace it. In  
10 many respects, it is different from all of those  
11 other minor components that have been relegated to  
12 either active or a routinely replaced elements.

13 CHAIRMAN RYERSON: Okay. Well --

14 JUDGE WARDWELL: Can I just explore a  
15 little bit more quickly about this typo because --

16 CHAIRMAN RYERSON: Have you found it?

17 JUDGE WARDWELL: -- you say on page 22  
18 of your petition under paragraph 8 that these are  
19 passive devices. Under nine, you say they are  
20 active devices. And Blanche makes similar  
21 statements at page 11, paragraph 28 and page 12,  
22 paragraph 36 where on 28 he says they are passive  
23 and on 36 he says they are active. I don't  
24 understand unless you're saying active is a typo for  
25 passive.

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1 MR. SHADIS: That should have read  
2 inactive I believe.

3 Good catch. But your earlier points are  
4 really well taken, Your Honor.

5 JUDGE WARDWELL: I have a list of them  
6 that I'm not going to take the time to go through.

7 MR. SHADIS: Thank you.

8 CHAIRMAN RYERSON: I have one more of  
9 that nature that the -- If I'm looking at the  
10 correct version, I think there was only one version  
11 of the Blanche declaration that was filed. The  
12 discussion of transformers appears to begin with the  
13 discussion of cables and it gets back to  
14 transformers and then finishes with cables. And I  
15 don't know if this word processor perhaps ran amuck.

16 But I think where we are, although the  
17 other judges may have some further questions, is  
18 this. The Applicant agrees that this is a fact  
19 question. And the Applicant's position is that you  
20 have not done the minimum to raise it as a fact  
21 question.

22 And I suppose the question is whether  
23 the Blanche declaration is sufficient to do that.  
24 And so we'll have to see what your revised one looks  
25 like and again we'll have to decide whether changes

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1 are significantly substantial that we really can't  
2 consider them because it's not fair to change things  
3 too much after everyone has already gone through the  
4 process of briefing and arguing based on what you  
5 filed. But that's sort of where I am that I need to  
6 see that in a better form.

7 MR. SHADIS: If I may comment with  
8 respect to the base on this that none of our  
9 contentions, we view none of them as contentions of  
10 omission because from our point of view adequacy for  
11 protection of public health and safety is the core  
12 and that adequacy really has to be subjective. But  
13 it is nonetheless the standard.

14 However, this contention on transformers  
15 I would have to say comes as close as any, closer  
16 than any, to being a contention of omission. And as  
17 such I think that our obligation is to (1) identify  
18 it as an issue of concern with safety implications  
19 and (2) to point to hole in the LRA where it should  
20 be. It is from that perspective a contention of  
21 omission and I think that the standard then for  
22 laying the basis is somewhat less than for other  
23 contentions.

24 CHAIRMAN RYERSON: Well, I think the  
25 point is well taken. So your position is that the

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1 active/passive issue really is what drives this  
2 contention. Because your position if I understand  
3 it is that if we were to conclude contrary to the  
4 staff guidance and the staff's position in this  
5 proceeding that transformers are at least  
6 potentially passive component, then you say really  
7 what you have a contention of omission. And you  
8 don't have an obligation on the contention of  
9 omission to challenge specifics of a program.

10 You're saying there is no program for  
11 transformers. And there should be essentially as a  
12 matter of law. If you make the factual  
13 determination that transformers are, in fact,  
14 passive, then as a matter of law, there has to be a  
15 plan and it ain't there is basically your argument.

16 MR. SHADIS: Correct. And I think that  
17 regulation goes to operability of the transformers.  
18 I think what is implied there is aging management.  
19 You have to keep them in a condition that they will  
20 be operable when called on. And from our point of  
21 view that trumps guidance. I think regulation  
22 always must.

23 CHAIRMAN RYERSON: All right.

24 MR. FERNANDEZ: May we be heard?

25 CHAIRMAN RYERSON: Do you have a

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1 comment? Yes.

2 MR. FERNANDEZ: A few. First, this  
3 clearly highlights our reservations about the  
4 Board's instructions allowing the Petitioners to  
5 supplement their filing at this late date. And we  
6 will address that in the written pleadings.

7 But other than the self-serving  
8 statements of Mr. Shadis who as the Board has  
9 observed has participated for decades in NRC  
10 proceedings, there's really nothing to assure us  
11 that they meant to say passive instead of active.

12 Also and the Board I think was being  
13 kind and not pointing out that on page 12 of the  
14 declaration there's no answer as to what is the EM  
15 AMP to assure. There's a series of question marks  
16 that are provided. I assume that that's not merely  
17 a typo and instead of question mark they meant to  
18 type a long diatribe about what the AMP was meant to  
19 assure.

20 And, in fact, that's the problem here.  
21 Even conceding that this is a contention of omission  
22 which maybe it is, maybe it isn't, even when a  
23 petitioner asserts that there's a gap they need to  
24 demonstrate why that gap is somehow material to the  
25 issues that are to be resolved here. And to

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1 demonstrate that here, it was the Petitioner's  
2 burden to demonstrate why this component is somehow  
3 passive and make a prima facie showing here which  
4 they do not.

5 All they have are bold assertions that  
6 because they say it is so, it is a passive component  
7 and follows by a recitation of the regulations in 10  
8 CFR. So even if a contention of omission had some  
9 sort of relaxed standard for admissibility under  
10 Part 2 which we would not agree, what has been  
11 presented by the Petitioners in this case is  
12 woefully lacking and any -- again as we had talked  
13 about earlier, prima facie showing, minimum facts of  
14 --

15 How are we to know, how is the Board to  
16 know, how is it that this -- Particularly in light  
17 of all the public information that's available with  
18 regard to why the staff considers these components  
19 to be active, why does the Petitioner believe them  
20 to be passive? There's nothing about that in here.

21 CHAIRMAN RYERSON: All right. Well,  
22 procedurally, I think again the way we're going to  
23 deal with this is it doesn't benefit anyone to have  
24 a record that consists of a declaration that is  
25 difficult to follow and then to have Mr. Shadis'

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1 representations as to what the declaration really  
2 meant. We will get a declaration that is for want  
3 of a better of term cleaned up and we will have to  
4 decide whether the changes are significantly  
5 substantial that we accept that.

6 Clearly, if there were new arguments  
7 that were never previously raised I doubt very much  
8 that they would be accepted. But if we see a  
9 cleaned up, if you will, declaration, we'll look at  
10 that in terms of whether there is the minimal  
11 factual showing required on admissibility.

12 Judge Kennedy, did you have some  
13 questions on this subject?

14 JUDGE KENNEDY: I have just one  
15 clarifying question. I probably should direct it to  
16 the Applicant. This is a point that the Petitioners  
17 raised. They point out that there's an aging  
18 management program for transformer structures, but  
19 that there is none for the transformers themselves.  
20 And I guess I'm giving you the opportunity to  
21 clarify why that would be.

22 (Off the record discussion.)

23 MR. FERNANDEZ: Well -- Let me consult.  
24 One second.

25 JUDGE KENNEDY: Okay.

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1 (Off the record discussion.)

2 MR. FERNANDEZ: Two points, one that I  
3 think it's addressing our application, the language  
4 that they're complaining about. It's a reference to  
5 the Indian Point license renewal application, not  
6 ours.

7 The second point to the extent our  
8 application addresses the casings around the  
9 transformers but not the transformers themselves,  
10 it's the same as in lots of other components around  
11 the plant. The casing is a passive component that  
12 is within the scope of Part 54 and subject to aging  
13 effects. And therefore as a passive component  
14 subject to aging effects an aging management program  
15 is designed for it.

16 Transformers because they are important  
17 to safety and subject to aging but active components  
18 an aging management program is not designed for it.  
19 They are addressed through the maintenance rule.  
20 And through the various statements that the  
21 Commission makes in issuing the final rule for  
22 license renewal, active components are managed in  
23 other ways that are not the same ways that passive  
24 components are. So that's why you see a dichotomy  
25 between the casing and the actual transformer.

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1           The same, the pumps have the same things  
2           and other components that have some sort of concrete  
3           structure or other metal structure around it that's  
4           exposed to the elements. But the component inside  
5           of it it's a safety related component. But it's  
6           active. That's dealt with under the maintenance  
7           rule. But the casing around it then you monitor it  
8           for aging effects and you have an aging management  
9           program for it.

10           JUDGE KENNEDY: Thank you.

11           CHAIRMAN RYERSON: Judge Wardwell, did  
12           you have questions?

13           JUDGE WARDWELL: Yes, I do. In case we  
14           do have to whatever weight comes into evaluating  
15           whether these are passive or active, you created  
16           several arguments in regards into why you believe  
17           they are active, why transformers are active. And I  
18           was curious then to your expounding a little bit on  
19           where you see -- And two of the aspects that I want  
20           to focus on are the change in properties and then  
21           the monitorability. Because I know that's also  
22           brought up by the Commission. I think it's in the  
23           '95 statement of consideration.

24           But in regards to change in properties  
25           what properties change in a transformer that make

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1       them active?

2                   MR. FERNANDEZ: I don't mean to read to  
3       the Board, but it's readily available in our answer  
4       and it is our position on page 41. So I'll repeat  
5       it for the record. In NRC guidance that was first  
6       encompassed in an NRC letter and has subsequently  
7       been incorporated into the standard review plan for  
8       license renewal, the NRC has stated that  
9       "transformers perform their intended function  
10      through a change in state by stepping down voltage  
11      from higher to lower value..."

12                  JUDGE WARDWELL: Okay. That's all I  
13      need to know.

14                  MR. FERNANDEZ: Okay.

15                  JUDGE WARDWELL: That was my question.  
16                  Why is that a change in the properties  
17      of the transformer?

18                  MR. FERNANDEZ: If I may since I'm not  
19      an electrical engineer, let me consult with our  
20      experts.

21                  JUDGE WARDWELL: Sure.

22                  (Off the record discussion.)

23                  MR. FERNANDEZ: I'm told, Your Honor,  
24      that it's a change in state as reflected on the  
25      final rule of the component changes of state here.

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1 from going from a lower voltage to a higher voltage.

2 JUDGE WARDWELL: But the transformer  
3 doesn't change its state. It's the input and output  
4 that changes state, isn't it? It's the electricity  
5 going through there. It's not the transformer.

6 MR. FERNANDEZ: Again, let me consult,  
7 Your Honor.

8 JUDGE WARDWELL: That's a yes/no  
9 question.

10 MR. FERNANDEZ: I understand.

11 (Off the record discussion.)

12 JUDGE WARDWELL: Is he spelling yes and  
13 no to you? I don't know --

14 MR. FERNANDEZ: As you know, lawyers are  
15 very complicated when they talk to technical people.  
16 So he may be giving me a yes or no answer and I'm  
17 asking him more questions.

18 JUDGE WARDWELL: Must have got the  
19 spelling wrong.

20 MR. FERNANDEZ: The answer is no. There  
21 is no change in the physical state like batteries  
22 and power suppliers and switch gears.

23 JUDGE WARDWELL: Okay. Well, what about  
24 -- The pump casings are passive components, are they  
25 not?

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1 MR. FERNANDEZ: Generally speaking for  
2 the purpose of the hypothetical agree.

3 JUDGE WARDWELL: Not hypothetical.  
4 Aren't they pump casings passive components?  
5 They're listed as that.

6 MR. FERNANDEZ: Yes.

7 JUDGE WARDWELL: Does the state of the  
8 water going through a pump change? The answer is --  
9 Well, I won't give you the answer. But what did he  
10 say?

11 (Laughter.)

12 Is not -- Let me rephrase the question.  
13 I rephrase the question. Does not the water change  
14 its state as it goes through pump?

15 MR. FERNANDEZ: No, it's still water.

16 JUDGE WARDWELL: But doesn't it change  
17 its properties?

18 MR. FERNANDEZ: Perhaps.

19 JUDGE WARDWELL: And yet that device is  
20 considered passive and has an aging management  
21 program for the pump casings.

22 MR. FERNANDEZ: The case, not the pump  
23 itself.

24 JUDGE WARDWELL: Not the impeller.

25 MR. FERNANDEZ: Right.

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1 JUDGE WARDWELL: I mean what is -- So  
2 the impeller isn't, but the pump casing still is.

3 MR. FERNANDEZ: Correct.

4 JUDGE WARDWELL: And yet the water  
5 flowing through it changes its properties.

6 MR. FERNANDEZ: Yes.

7 JUDGE WARDWELL: Why isn't that  
8 analogous to a transformer?

9 MR. FERNANDEZ: We believe that the  
10 analogy that the Board should be focused on is the  
11 one in the regulations and the statement of  
12 considerations which are battery chargers that are  
13 closer to --

14 JUDGE WARDWELL: Okay. But why -- In  
15 the regulations, several items were exempted. Why  
16 weren't transformers included in there then if in  
17 fact they were considered to be?

18 MR. FERNANDEZ: As when the Commission  
19 makes lots of rule-making actions, it does not seek  
20 to make exhaustive lists. It provides guidance to  
21 the --

22 JUDGE WARDWELL: True. But this is not  
23 a minor item. This would be one that would be very  
24 obvious because if you look at that list it would  
25 seem that, yes, it's obvious. Transformers would

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1. have been in there if in fact they were providing  
2. that list.

3. MR. FERNANDEZ: Under tradition rules of  
4. regulatory construction, the Board cannot read that  
5. gap of transformers being listed there as imputing  
6. some sort of knowledge on behalf of the Commission  
7. that they sort to include them.

8. JUDGE WARDWELL: Nor can you say that in  
9. fact they should have been. They aren't. They  
10. can't be still considered that either way.

11. MR. FERNANDEZ: Actually, we can because  
12. we rely on the staff guidance and the Commission's  
13. issuance as of other license renewals where  
14. transformers were treated as active components.

15. JUDGE WARDWELL: Moving onto the  
16. monitorability, I can understand that if a device  
17. was monitorable and showed impending failure that  
18. actions could be taken before that failure occurred  
19. and so it could be replaced. You state I believe  
20. that these are monitorable devices. I was not aware  
21. of any success that the electrical industry has had  
22. in monitoring transformers to replace them before  
23. they fail. Usually they fail and then they're  
24. replaced.

25. Could you elaborate on any experience

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1 the electrical industry has in being able to have  
2 preventive replacement of transformers prior to  
3 failure such that they are truly monitorable in a  
4 meaningful sense?

5 MR. FERNANDEZ: Your Honor, the  
6 transformers are currently within the scope of the  
7 procedures that we have implemented to comply the  
8 maintenance rule. And under the maintenance rule as  
9 the Board is aware we are required to maintain  
10 equipment to adequate standard to maintain public  
11 health and safety.

12 As I understand it, oil filled auxiliary  
13 transformers, unit auxiliary transformers and  
14 generator step-up transformers are subject to  
15 periodically oil analysis along with temperature,  
16 current and voltage monitoring. The dry unit  
17 substation transformers are subject to periodic  
18 metering and double testing and temperature  
19 monitoring. Significant changes in the state of the  
20 transformer will be detected in the components being  
21 fed by that transformer.

22 JUDGE WARDWELL: And has that been  
23 successful in preempting, providing preemptive  
24 replacement of transformers prior to failure because  
25 I assume that's what you want to do rather than have

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1       them fail and then scramble around to replace them  
2       then?

3                       (Off the record discussion.)

4                       MR. FERNANDEZ: I'm told that the  
5       operating experience at the plant is adequate with  
6       regard to this issue and they have been engaged in  
7       monitoring and have had certain success in  
8       addressing these issues. But I think squarely we  
9       want to make sure that we answer the questions  
10      raised by the Board. But the questions that the  
11      Board is positing are not the questions that the  
12      Petitioner raised in their filing.

13                      JUDGE WARDWELL: I'm aware that's your  
14      position. I'm just making sure we get the record  
15      complete of the questions that I had in case we need  
16      them as we make our decision.

17                      Staff, you raised very similar arguments  
18      to the Applicant. And I was wondering if you would  
19      like to comment on both the change in properties and  
20      the monitorability of transformers.

21                      MS. MONTEITH: Your Honor, I don't have  
22      much to add to the monitorability other than what we  
23      have raised in our response.

24                      JUDGE WARDWELL: Are you aware of any  
25      success the electrical industry has or even as

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1 specific as nuclear power plants have in preemptive  
2 replacement prior to failure transformers?

3 MS. MONTEITH: I can check with the  
4 staff if you give me a moment.

5 JUDGE WARDWELL: Sure.

6 (Pause.)

7 MS. MONTEITH: Your Honor, the staff  
8 doesn't have that information right here.

9 JUDGE WARDWELL: Okay. Thank you.

10 One of the more definitive statements in  
11 regards to transformers being active came from a  
12 letter from the NRC to the Nuclear Energy Institute.  
13 And that was pretty definitive, but the question I  
14 asked is, is that particular letter legally binding  
15 in any fashion?

16 MS. MONTEITH: No, Your Honor, it's not  
17 legally binding, but it was the basis for  
18 determining in that staff guidance that transformers  
19 do not require an aging management plan.

20 JUDGE WARDWELL: What would you consider  
21 the relative weight as we weigh the influence of  
22 that letter in our decision? Would you think that  
23 letter is more or less persuasive than a standard  
24 review plan or a NUREG or is it of equal value or  
25 all just of relative fashion?

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1 MS. MONTEITH: I'll have to ask  
2 co-counsel. If you'll give me a moment?

3 JUDGE WARDWELL: Sure.

4 (Pause.)

5 MS. MONTEITH: Your Honor, it's our  
6 position that it is highly relevant, persuasive  
7 because it was written by the man who I believe  
8 developed the license renewal process and very early  
9 in the license renewal process. So it was the first  
10 and probably definitive statement of transformers or  
11 the scope of transformers requirement of an aging  
12 management review there.

13 JUDGE WARDWELL: Do you know if it is  
14 definitive in regards to how properties are changed  
15 in the transformer as it performs its function and  
16 how monitorable it is?

17 MS. MONTEITH: I would believe it is.  
18 It doesn't go into as much detail as possibly it  
19 could in terms of how transformers function. I  
20 understand that --

21 JUDGE WARDWELL: Do you believe it uses  
22 the fact that the electricity changes in state as  
23 the reason why it changes its properties or state?

24 MS. MONTEITH: I don't believe I can  
25 speak for Mr. Grimes on the --

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1 JUDGE WARDWELL: Okay. We can read it.  
2 That's fine.

3 MS. MONTEITH: Okay.

4 JUDGE WARDWELL: Thank you.

5 CHAIRMAN RYERSON: Thank you, Judge  
6 Wardwell.

7 That brings us to contention 3. We're  
8 right on time. Judge Wardwell, you had some  
9 questions on 3.

10 JUDGE WARDWELL: Okay. I do. I'll  
11 shift gears here now. Mr. Shadis, what background  
12 does Blanche bring to this table in regards to  
13 experience with buried pipes and structures?

14 MR. SHADIS: Well, I'll preface that,  
15 but I would like to ask if he could address that  
16 himself. But he has had 40 years of experience in  
17 the nuclear industry at management level for some  
18 good portion of that and conforming to NRC  
19 regulation. He's not a plumber. And he's not a  
20 piping engineer. But he has worked on those issues  
21 in his work experience.

22 And if you would indulge, I would like  
23 to let Mr. Blanche address.

24 JUDGE WARDWELL: No. That's sufficient,  
25 I believe. I would rather have just you speak.

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1                   On page 23, number paragraph 3, you make  
2                   the statement that pipes and tanks, whether by  
3                   design or structural or system failure within the  
4                   nuclear power station, may contain radioactive water  
5                   in excess of EPA drinking water limits.

6                   My question is, what relevance do  
7                   drinking water standards have in dealing with the  
8                   license renewal? Is there any legal statement that  
9                   would say that's a criteria that we -- I don't quite  
10                  understand the points you were trying to make with  
11                  number 3.

12                  MR. SHADIS: Well, if the intent of your  
13                  question is to point out that EPA drinking water  
14                  standards are somewhat more stringent than NRC  
15                  reporting standards, you know, then there's no real  
16                  answer to that.

17                  The intent here was to point out that  
18                  these pipes carried liquid that if it was released  
19                  would lead to undesirable effects on the  
20                  environment. And I think that our focus is more on  
21                  the fact that they could leak --

22                  JUDGE WARDWELL: While certainly an  
23                  operational issue and unanticipated release of  
24                  radioactivity is not desirable by anyone's stretch  
25                  of the imagination, how does it lead to license

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1 renewal and not a current licensing basis?

2 MR. SHADIS: Our take on it was if we  
3 didn't put that in, then the next question would be,  
4 so what is the harm? What is the effect? And the  
5 effect is a --

6 JUDGE WARDWELL: Let's move into that,  
7 then. On page 24 in number 6, you say, "Recent  
8 events around the United States and the world as  
9 well as at Seabrook Nuclear Power Station have  
10 demonstrated that various aging piping systems have  
11 experienced leaks and/or corrosion. These leaks and  
12 corrosion there threatened the integrity of such  
13 systems and compromise their ability to achieve  
14 their intended function."

15 And I was wondering, how do you portray  
16 leaks compromising the ability of the pipes to do  
17 their intended function? What do you think the  
18 intended function of a pipe is?

19 MR. SHADIS: Well, it's a transfer  
20 conduit.

21 JUDGE WARDWELL: Yes, a fluid of some  
22 sort.

23 MR. SHADIS: -- if you conduct the  
24 contents from one point to another. And with  
25 respect to liquids bearing radionuclides, the intent

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1 is to accomplish that without violating NRC  
2 regulation and uncontrolled, unmonitored, unmeasured  
3 releases are certainly in violation of --

4 JUDGE WARDWELL: Is that the intended  
5 function that we're dealing with under license  
6 renewal space?

7 MR. SHADIS: I think it is one of them,  
8 certainly. You know, it is one category of piping,  
9 if you will, that needs attention in the extended  
10 period of operation. The safety-related piping;  
11 that is, also buried, hard to access, surface water  
12 system and so on, also needs attention. But I think  
13 that --

14 JUDGE WARDWELL: And so that needs to be  
15 able to convey the water, but it doesn't have to do  
16 it without any leaks. You could have a leak. And  
17 as a buried pipe, wouldn't the only way that  
18 intended function integrity would be jeopardized  
19 would be if, in fact, the leak was so large that you  
20 lost all pressure and weren't able to convey the  
21 fluid?

22 MR. SHADIS: You lost flow. Yes, that's  
23 correct.

24 JUDGE WARDWELL: How likely is that to  
25 happen in a buried system?

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1 MR. SHADIS: It occurred I think at  
2 Salem this year, where there are some 600 feet of  
3 auxiliary feedwater piping that was buried. It's a  
4 strange application, but, nonetheless, that's what  
5 they had. And they had to replace it because the  
6 wall thickness was reduced to something less than a  
7 tenth of its original wall thickness.

8 So what they were looking at was a  
9 catastrophic failure over the extent of the piping.  
10 And I don't --

11 JUDGE WARDWELL: So that's what it would  
12 take, would be a catastrophic failure of that pipe.  
13 Is that correct?

14 MR. SHADIS: Well, I think that not what  
15 it would take, but that's what you could expect.  
16 And that's what you would want to avoid by a proper  
17 aging management program.

18 JUDGE WARDWELL: In Pilgrim decision CLI  
19 10-14, I was curious. Have you read that decision  
20 of the commissioners?

21 MR. SHADIS: I have not.

22 JUDGE WARDWELL: Okay. Thank you.  
23 Staff, in regards to Pilgrim, --

24 MS. SPENCER: Yes.

25 JUDGE WARDWELL: -- 1014, I think you

1 reference that and advocate that not all the  
2 functions of an SSC, a systems structure component,  
3 fall under licensing review from Pilgrim. As I read  
4 Pilgrim, didn't the commissioners go to great length  
5 to describe the conditions there at Pilgrim and then  
6 say that because of that, it would be highly  
7 unlikely that a leaking pipe would jeopardize the  
8 intended function of the pipes for that given site  
9 condition?

10 MS. SPENCER: Your Honor, I think the  
11 case is a little bit broader in implication than  
12 what you are saying because there was a major issue  
13 in Pilgrim about what the intended function -- what  
14 could be challenged.

15 And I think the Commission went to great  
16 lengths to lay out that pipes have more than one  
17 intended function but only one, the intended  
18 function for purposes of license renewal, is to  
19 provide adequate flow and pressure and that in the  
20 Pilgrim case, the Board tried to narrow --  
21 reconstruct the intention so that it would challenge  
22 an intended function for purposes of license  
23 renewal. And they said, based on a hearing that was  
24 held, that there was no evidence that a hole, a leak  
25 of the type that would actually compromise the

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1 intended safety function, as defined in 54.4, would  
2 be compromised.

3 So it has to be read -- it's a rather  
4 broad case because it's instructive both on what the  
5 intended functions are purposes of license renewal  
6 and then the specifics of the Pilgrim case.

7 But I think I would point out that in  
8 this particular case, the petitioners haven't  
9 provided any evidence of leaks of the type that  
10 would actually get to the point of preventing it  
11 from a performance intended safety function for  
12 license renewal and --

13 JUDGE WARDWELL: Can I stop you right  
14 there before I lose my thought? If they had, let's  
15 say hypothetically they had written a petition where  
16 they had pointed out why those specific site  
17 conditions at Seabrook would have caused a potential  
18 loss of integrity of the pipe. Then would you agree  
19 it would be considered as an admissible contention?

20 MS. SPENCER: It would meet, I would  
21 concede that it would meet, the 2309(f)(iii)  
22 criteria that the issue would be within scope, but  
23 then we would have to go into whether the other  
24 elements --

25 JUDGE WARDWELL: Sure.

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1 MS. SPENCER: But, yes, that is correct.  
2 And that's what I think Pilgrim stands for.

3 JUDGE WARDWELL: Thank you. I just want  
4 to make sure we were --

5 MS. SPENCER: Yes.

6 JUDGE WARDWELL: -- in synch with what  
7 Pilgrim was saying.

8 MS. SPENCER: Absolutely.

9 JUDGE WARDWELL: The conclusion that I'm  
10 wondering isn't there is that, is it fair to say  
11 that Pilgrim didn't exempt all piping categorically  
12 from license renewal as in regards to leakage, but  
13 it would have to be demonstrated that there would be  
14 a site-specific condition that would exist that  
15 might bring it into play.

16 MS. SPENCER: Yes. It has to be  
17 alleging leakage of the type that would interfere  
18 with the 54.4 function, yes.

19 JUDGE WARDWELL: Thanks. Thank you.  
20 That's what I have.

21 CHAIRMAN RYERSON: Judge Kennedy?

22 JUDGE KENNEDY: I'm good.

23 CHAIRMAN RYERSON: All right. That  
24 takes us to contention 4. And I had a few general  
25 questions.

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1 JUDGE WARDWELL: Well, I should just say  
2 yes, let me just leave it open. I should turn at  
3 least and see if you had any comments you wanted to  
4 make in regards to -- I didn't have any specific  
5 questions for the applicant, but I want to make sure  
6 you have an opportunity to say if you wanted to  
7 comment on anything.

8 MR. HAMRICK: This is Steven Hamrick for  
9 the applicant.

10 I think Ms. Spencer adequately addressed  
11 your concerns. And I am in agreement with those  
12 sentiments.

13 JUDGE WARDWELL: Thank you.

14 CHAIRMAN RYERSON: Okay. I have a few  
15 general questions about contention 4 before we get  
16 to some, maybe not all, of the subparts. Mr.  
17 Fernandez, I think you cite what I'll call the other  
18 Pilgrim decision, the decision dealing with the SAMA  
19 analysis, Severe Accident Mitigation Analysis, March  
20 2010 Pilgrim decision.

21 But that is not a contention  
22 admissibility decision, correct? That's a decision,  
23 indeed, on summary disposition in which the  
24 Commission actually reversed the granting of summary  
25 disposition. So I guess my first question is

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1 really, you know, what is the relevance of that?

2 The Commission then opined we followed  
3 dictum that the Commission issues with some respect,  
4 but it was really not in front of them. But the  
5 Commission did say that the test seems to be genuine  
6 plausibility.

7 But, you know, isn't that a fact  
8 question? And particularly in the procedural  
9 context we're in right now, isn't that a fact  
10 question? Why don't we have an admissible  
11 contention?

12 MR. FERNANDEZ: Mr. Hamrick will be  
13 addressing the contentions, Your Honor.

14 CHAIRMAN RYERSON: Thank you.

15 MR. HAMRICK: Yes. Judge Ryerson, this  
16 is Steven Hamrick for the applicant.

17 CLI 10-11 was a summary disposition  
18 decision. However, the issues are very similar.  
19 What the legal standard at summary disposition is is  
20 the proponent of the motion must show there is no  
21 genuine dispute of a material fact. And you're  
22 entitled to a judgment as a matter of law.

23 That's basically the flip side of 10 CFR  
24 2309(f)(i)(6). At the contention admissibility  
25 stage, it is the petitioner's burden of showing

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1 there is a genuine dispute of a material fact. And  
2 also, in 10 CFR 2309(f)(i)(4), they're required to  
3 demonstrate the issue raised as material. So  
4 there's definitely an evidentiary standard that's  
5 different, but the common theme is at both stages,  
6 you have to talk about what is a material issue.

7 And that's what the Commission was  
8 talking about. They concluded the substantive  
9 portion of CLI 10-11 by saying that we're going to  
10 remand some of these meteorological modeling issues  
11 for a discussion for review of the material issues  
12 and then the last three or four pages of the slip  
13 opinion or with the Commission going into detail of,  
14 well, telling the Board what would be a material  
15 issue, what do you need to look at. And that's the  
16 same standard that must be met here.

17 Again, there certainly are differences  
18 between whether an affidavit is required at certain  
19 stages or not as to the level of support. But the  
20 issue that we were getting at is that the  
21 over-arching failure of contention 4 is the  
22 petitioner's failure to come to grips with what  
23 their burden is in a SAMA contention is to show that  
24 it is genuinely plausible that if we tinkered  
25 around, changed inputs, changed assumptions, that it

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1 would have an effect to the ultimate cost-benefit  
2 conclusion that is in the application.

3 And that is not only from the Commission  
4 decision from Pilgrim. They said that, I believe,  
5 in the Duke case, Catawba-Maguire back in CLI  
6 03-717, that if you want to show a SAMA needs to be  
7 addressed, you have to show that a change in risk  
8 needs to be addressed at hearing. You need to show  
9 that it's material, it's a matter of material. And  
10 in a SAMA analysis, the question of materiality is,  
11 would it change the cost-benefit conclusion?

12 CHAIRMAN RYERSON: Okay. Just so I'm  
13 clear, the Commission has said expressly that in  
14 order for a contention to be admissible, the  
15 petitioner does not have to show evidence that would  
16 be sufficient to defeat a motion for summary  
17 disposition, that it is a lower standard of proof.

18 You're not suggesting that it's harder  
19 to get a contention admitted than it is to resist an  
20 applicant's summary disposition motion?

21 MR. HAMRICK: No, absolutely not. The  
22 evidentiary threshold, it would be higher in summary  
23 disposition stage. What is missing here and what  
24 the petition actually admits in I think two  
25 different places is Pilgrim CLI 10-11 says you need

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1 to show it's genuine plausible that the cost-benefit  
2 conclusions will change and the petition says,  
3 "We're not going to do that. We're going to assume  
4 all of these changes will all be so great and so  
5 large that, of course, the cost-benefit conclusions  
6 will change."

7 That is certainly not sufficient at the  
8 summary disposition stage. It is also not  
9 sufficient here, where a petition must be supported  
10 with either allegations of fact or expert opinion.

11 The SAMA analysis is a very complicated  
12 beast. It's a probabilistic model that a layman  
13 certainly can't say, you know, "This looks like it's  
14 going to be a big deal. And so I think, of course,  
15 these changes" --

16 JUDGE WARDWELL: Well, we don't have to  
17 get into that level of detail to be admitted  
18 necessarily. There could be circumstances, could  
19 there not -- and here at Seabrook seems to be one --  
20 where we have a large population base in a fairly  
21 complex geographic location; i.e., being on the  
22 shoreline and also next to mountains, that may say,  
23 "Hey, there, that's plausible enough. And we will  
24 sort out the issues you are starting to get into at  
25 a hearing, not that they aren't valid issues to be

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1 addressed, but shouldn't those be addressed at a  
2 hearing?" and that just the presence of the  
3 location, it is intuitively obvious that if you  
4 change some of the air models, for instance, yes, it  
5 certainly could have.

6           You don't have to demonstrate that it  
7 actually does at this point, do you? I think what  
8 you were saying is they're so complex you can't,  
9 that the petitioner couldn't do that. Absolutely, a  
10 petitioner could do that. What is required, you're  
11 saying --

12           MR. HAMRICK: Yes.

13           JUDGE WARDWELL: -- that they could do  
14 that. What is required, this complex SAMA analysis  
15 that you are describing, you think a petitioner  
16 could redo that to demonstrate that it has an  
17 influence on the results.

18           MR. HAMRICK: They don't necessarily  
19 need to redo the SAMA analysis. The thing to do is  
20 demonstrate that the issue is material. And the  
21 word "demonstrate," they would have to make some  
22 showing that it is material, not representations of  
23 their representative that, of course, it would have  
24 some change. They need to demonstrate it.

25           The way you can do that, one way, would

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1 be to perform your own SAMA analysis. I'm not  
2 saying that's the only way, a different way. That  
3 was done in the Indian Point proceeding by Dr. Lyman  
4 for Riverkeeper. He performed his own SAMA  
5 analysis, changed the inputs, and said, "Here I  
6 have shown that if you change the inputs in the way  
7 I would like you to do, the cost conclusions would  
8 change by X amount."

9 That's one approach. Another approach  
10 would be to have an expert who in PRA issues,  
11 probabilistic risk assessment issues, who can say,  
12 "Based on my experience, I know that if you change  
13 these inputs one way or another, the inputs would --  
14 the total risk of a severe accident would change by  
15 a factor of X," two or three or four.

16 And then you could then take that, go to  
17 the application. Again, you have to look at  
18 specific portions of the application and dispute the  
19 application. The application has a table, F.7.1  
20 that shows the costs of all the potential mitigation  
21 alternatives.

22 You then take the cost, multiply it by  
23 the factor that your expert has said might be  
24 applicable, get what the expert's general costs  
25 might be, and show that there is some materiality,

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1 show that it is genuinely plausible that the SAMAs  
2 may become cost-beneficial. So there is some work  
3 that needs to be done.

4 CHAIRMAN RYERSON: Let me ask the staff,  
5 if I may, whether the staff has the same standard in  
6 mind. And I'm quoting from your opposition at page  
7 48, where you say and I quote, "To raise a material  
8 issue" -- and this is in the SAMA context --  
9 "petitioner must demonstrate that challenges to the  
10 SAMA analysis would be likely to result in  
11 identification of an additional potentially  
12 cost-beneficial SAMA."

13 And my question is, do you really mean  
14 that? Do you mean they have to show, petitioner has  
15 to show, that it is likely or do they merely have to  
16 show -- and we'll get to how they might do that, but  
17 isn't their burden at this stage to show that it's  
18 plausible that there could be identification of an  
19 additional cost-beneficial SAMA? Isn't that  
20 sufficient for contention admissibility that it's  
21 plausible?

22 MR. SMITH: Your Honor, Maxwell Smith.  
23 I'll be handling contention 4.

24 One of the things I was looking at when  
25 I wrote that section of our brief was on the earlier

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1 Pilgrim decision, CLI 9-11, that was also in the  
2 summary disposition statement issued by the  
3 Commission the year before, one of the things that I  
4 found instructive was, at bottom, the question is  
5 whether Pilgrim Watch provided support for its claim  
6 that there is a genuine material -- material was  
7 emphasized in that case -- dispute; that is, a  
8 dispute that could lead to a different conclusion on  
9 potential cost-beneficial SAMAs.

10 So I'm not entirely sure that the  
11 "likely" was the best choice of words, but they need  
12 to show I think that there's -- maybe "plausible" is  
13 the best way to put it but some indication beyond an  
14 assertion or a bare statement that the dispute will  
15 be material; i.e., that it could lead to the  
16 identification of additional cost-beneficial SAMA.

17 CHAIRMAN RYERSON: Okay. So the test I  
18 think or at least the applicant and the staff are  
19 saying is something like a factual demonstration of  
20 plausibility. Again, you don't have to, normally  
21 you don't have to, show you can win the contention  
22 in order to find it admissible but some factual  
23 showing of plausibility that it would affect the  
24 cost-benefit analysis. You agree with that?

25 MR. SMITH: I agree with that, Your

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1 Honor.

2 CHAIRMAN RYERSON: Okay. So let me get  
3 back to Mr. Shadis, who almost has his hand up.

4 MR. SHADIS: I was just -- trust me, I  
5 was not raising my hand.

6 (Laughter.)

7 CHAIRMAN RYERSON: Well, you were the  
8 logical person to come to now because we pretty much  
9 have a standard that seems somewhat reasonable:  
10 plausibility. You have to at least show  
11 plausibility. And this contention, unlike the other  
12 three, you do not have expert support to give you a  
13 little helping hand here.

14 What is your factual basis for the  
15 assertion, which I assume you are making, that it is  
16 at least plausible that additional SAMAs would  
17 result in cost-benefit?

18 MR. SHADIS: It's twofold. First, we  
19 did provide documents, copies of technical papers,  
20 which show that different elements of the whole  
21 process in developing SAMA for Seabrook are  
22 unreliable or not conservative. And that would just  
23 simply call into question the validity of the  
24 Seabrook's treatment of SAMA. But, then, going to  
25 the question of materiality, will there be a

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1 substantial effect if the different elements are  
2 adjusted, the different factors are adjusted? And I  
3 really would object to next eras' trivialization of  
4 this and say about tinkering with these things.

5 It's not a question of tinkering. What  
6 we have in almost every instance at every turn where  
7 one can choose a factor to factor in is a choice of  
8 some less conservative factor. And the result is  
9 that you have a cascade of non-conservations.  
10 Selecting the mean, instead of the conservative  
11 extreme would be an example.

12 You have a cascade. And the result is  
13 geometric in proportion. So that if you lose a  
14 tenth on the first factor, it becomes a hundredth on  
15 the second factor. It really is an expanding band  
16 of error.

17 May I have just one moment, please?

18 CHAIRMAN RYERSON: Yes.

19 (Pause.)

20 MR. SHADIS: Can you hear that?

21 JUDGE WARDWELL: Press the button on her  
22 mike.

23 MS. LAMPERT: What?

24 JUDGE WARDWELL: When you are speaking  
25 like that, both of you press each of your buttons on

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1 the mike. Look at your mike.

2 MS. LAMPERT: Oh, okay. I get it.

3 JUDGE WARDWELL: There is a button  
4 there. Mr. Shadis? Both of yours. So now we won't  
5 hear you if you whisper.

6 MR. SHADIS: Thank you.

7 (Pause.)

8 CHAIRMAN RYERSON: I'm sorry. Mr.  
9 Shadis, are you ready?

10 MR. SHADIS: I can't begin to repeat  
11 what my colleague has told me. And I would beg your  
12 indulgence to let her address that point.

13 CHAIRMAN RYERSON: She's not a witness.  
14 She is not a declarant. Is that correct?

15 MR. SHADIS: That is correct.

16 CHAIRMAN RYERSON: Then I'm happier to  
17 hear from her. We don't want to get involved in  
18 taking evidence, taking testimony, but if she is  
19 speaking as an advocate and not as an witness, we're  
20 welcome --

21 MR. SHADIS: If there are any portions  
22 of our pleading that are more clear, more carefully  
23 edited, it's her effect.

24 I just want to point out because  
25 otherwise I'm going to forget this, that since we

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1 filed our petition, there have been numerous  
2 requests for additional information filed by NRC  
3 staff. And many of them go directly to the issues  
4 that we raised with respect to the SAMA, including  
5 the lack of conservation of the on-shore/off-shore  
6 -- I don't know what it's called -- diurnal effect,  
7 I suppose, but a day/night effect of the winds  
8 on-shore/off-shore, the terrain and so on. And it  
9 is I think really validation of our concern that  
10 this overall was not a conservatively done document.

11 And, with that, I would like to ask Mary  
12 Lampert to address your questions specifically.

13 CHAIRMAN RYERSON: Yes, Ms. Lampert?

14 MS. LAMPERT: Yes. I appreciate the  
15 opportunity.

16 The first point you were asking was how  
17 these different elements produced a less  
18 conservative result. And I whispered to Mr. Shadis  
19 here that the problems are a combination minimizing  
20 the results and the use of the inappropriate, wrong  
21 input. So it's a combination of the two.

22 I think it would be perhaps easier to  
23 look at it in terms of the risk consequence code  
24 that they chose. And that is an important word --  
25 "chose" to use the Mac-S2 to do their analysis.

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1 That --

2 CHAIRMAN RYERSON: We'll get to that  
3 specifically. That is one of your --

4 MS. LAMPERT: Because it --

5 CHAIRMAN RYERSON: That is 4(c)

6 MS. LAMPERT: Yes.

7 CHAIRMAN RYERSON: Just be aware we'll  
8 get to each of these individually. I don't know if  
9 you want to take it up then or can --

10 MS. LAMPERT: Well, because that would  
11 incorporate some of the criticisms -- then we can  
12 get to the others -- that this particular code,  
13 which I first thought was a Mac-S is this is a new  
14 sandwich in a fast food place, but it has four parts  
15 or modules. Three deal with input factors that the  
16 applicant again chooses to put in. And the last is  
17 an output file.

18 Now, the problem with the use of this  
19 code is that many parts of it are inappropriate for  
20 here and it is a very old code. The fellow who I  
21 have used as an expert and we will use as an expert  
22 here wrote the FORTRAN for this code and its  
23 predecessor. And he said -- and I believe we have  
24 put it in our motion -- that to even think you could  
25 come up with economic consequences from the use of

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1 this code is a total waste of time because it  
2 doesn't factor in all considerations that are  
3 necessary.

4 The first module, called ATMOSE,  
5 projects what the deposition would be and where it  
6 would go. And the basic problem that you, Judge  
7 Wardwell, were talking about is embedded in the code  
8 is the straight-line Gaussian plume that assumes  
9 that a plume will travel like the light from a  
10 flash; in other words, it just will go straight.

11 And it is inappropriate for a complex  
12 situation such as Seabrook that is by the ocean.  
13 And it doesn't take into consideration the sea  
14 breeze, for example, which occurs frequently at this  
15 site as the land heats up warmer than the water,  
16 that in a straight line, the way they model it, if  
17 the wind director is pointing out to sea, then that  
18 is the end of it. But, in reality, there is a  
19 reversal. And it comes back in over the land, which  
20 isn't captured by the model or the meteorological  
21 input.

22 And so that starts out by using the  
23 wrong plume model. They should be using, instead, a  
24 complex model. And this certainly is in a conflict  
25 with the rule of reason because there are many

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1 models for complex situations that are used  
2 frequently by other agencies; for example, for  
3 example, to use Air Mod or Calput, which is  
4 appropriate, for this site. And the point is what  
5 would happen. What would happen, you would  
6 indicate, instead of the deposition being in like a  
7 pie wedge, that you would then see that a much  
8 larger and different area would be impacted. And,  
9 hence, that would contribute to an increase in cost  
10 and consequences.

11 Also, at most, what the applicant does  
12 is input the source terms. They have a choice of  
13 how they're going to do this. And we have stated  
14 that their choice of using the map code was the  
15 wrong choice because that underestimates  
16 consequences. And we gave examples of that, as  
17 opposed to using even what is in the code itself and  
18 the NRC has used. And we cited studies.

19 So you have right from the get-go this  
20 first module, ATMUSE, being minimizing consequences,  
21 having the wrong source code data, the wrong weather  
22 data. And that is carried through. This data in  
23 ATMUSE is carried through the subsequent models.

24 The second model is called EARLY. And  
25 that models what happens in the first seven days of

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1 the accident. There you have inputs and assumptions  
2 of decay. And this is where your emergency planning  
3 data comes into importance because it -- in  
4 assessing health costs, the importance is how many  
5 people get out of Dodge in time and, hence, had they  
6 modeled the applicant, the likely emergency planning  
7 variables of notification time and how long  
8 evacuation time.

9 We criticized the fact that they  
10 actually put in very little data in their  
11 application. You would have to really look at their  
12 code. They referred to simply the emergency  
13 response plan, the standard operating procedures,  
14 that are used here at this site. And that really  
15 doesn't tell anything.

16 They didn't even have the KLB,  
17 evacuation time estimates reference, so we would be  
18 able to make some guesses, analysis of how accurate  
19 the input data was there. But we know from --

20 MR. FERNANDEZ: Your Honor, may we  
21 interrupt for a second?

22 CHAIRMAN RYERSON: Pardon?

23 MR. FERNANDEZ: We'd like to object.  
24 The Board's order clearly stated that only the  
25 representatives that have been identified so far in

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1 this proceeding were allowed to speak at the  
2 hearing.

3 In addition to that, I believe that the  
4 Board allowed the indulgence of Ms. Lampert to speak  
5 on a narrow question that was asked on the  
6 assumption that she would not be testifying.

7 She is not talking about anything that I  
8 have seen in the written pleadings. So it seems to  
9 be beyond the written record. She has not been  
10 identified as a representative of any of the  
11 organizations before the Board in any of the  
12 filings.

13 So at this point the applicant objects  
14 to the continued testimony from the representative.

15 CHAIRMAN RYERSON: Thank you very much.

16 MS. LAMPERT: I apologize if I've gone  
17 too far. And I will try to answer a specific  
18 question in the fewest number of words possible.  
19 Thank you.

20 CHAIRMAN RYERSON: Okay. Thank you.

21 I think unless one of the other judges  
22 has a more generic question at this point, it might  
23 be useful to go through the individual subparts of  
24 contention 4.

25 JUDGE WARDWELL: It maybe would be

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1 worthwhile to get a comment, --

2 CHAIRMAN RYERSON: Go ahead.

3 JUDGE WARDWELL: -- especially since the  
4 recent discussion. And that is for Mr. Fernandez,  
5 if you might. On page 65, you state that better  
6 models isn't the standard. And you go on to say  
7 that "Because it is subject to NEPA's rule of  
8 reason, the pertinent question for a SAMA analysis  
9 is not whether there are plainly better models or  
10 whether the analysis can be further refined but,  
11 rather, whether the selected methodology is  
12 reasonable." And that, that last statement, was a  
13 quote that came out of Pilgrim 10-11 that we have  
14 discussed earlier at slip op. at 37.

15 I guess it was going to be Mr. Hamrick  
16 that we're talking to.

17 MR. HAMRICK: Yes.

18 JUDGE WARDWELL: Sorry. Wouldn't you  
19 agree that outdated models, though, could be  
20 challenged?

21 MR. HAMRICK: Yes.

22 JUDGE WARDWELL: And that would be a  
23 reasonable challenge to have?

24 MR. HAMRICK: If the challenge is  
25 otherwise adequately supported and meets the other

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1 requirements, then yes.

2 JUDGE WARDWELL: Okay. Thank you.

3 MR. HAMRICK: I'll leave it there.

4 JUDGE WARDWELL: I'll leave it there,  
5 too.

6 CHAIRMAN RYERSON: Okay. We may not  
7 have questions on all the subparts, but let's go  
8 through them all and see. Subpart A, Judge Kennedy?

9 JUDGE KENNEDY: I just have a clarifying  
10 question for Mr. Shadis. On page 40 of the  
11 petition, there is a statement made that DR fails to  
12 model spent fuel pool accidents in external events.  
13 I guess I'm looking. It sounds like an error of  
14 omission.

15 So I'm curious as to what would be the  
16 regulatory basis for the applicant performing that  
17 analysis. I think I'm on page 40 of the petition.  
18 And maybe I --

19 MR. SHADIS: I think, yes.

20 JUDGE KENNEDY: Yes. I think I've got  
21 the wrong -- yes, page 40. It seems like an  
22 omission. I know we talked about this a little  
23 before, that you tend to focus on adequacy, but this  
24 seems like a clear statement of omission.

25 MR. SHADIS: It is. And it is a

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1 statement of omission which is a part of the entire  
2 contention. The contention itself is still a  
3 contention regarding adequacy. And the omission is  
4 part of the inadequacy.

5 JUDGE KENNEDY: It seems like the bulk  
6 of the contentions related to the modeling or the  
7 input assumptions methodology-type issues. This  
8 seems to be a scope of what needed to be considered  
9 under the severe accident scope.

10 MR. SHADIS: Well, yes. And there is a  
11 range of accidents that needs to be considered. And  
12 the spent fuel pool accident, spent fuel fire,  
13 whatever, if it is considered, it will certainly  
14 make a whopping difference in the amount of source  
15 term that you would have to deal with.

16 The underlying question really is  
17 whether without it, you can derive an adequate  
18 assurance of public health and safety from the SAMA.

19 JUDGE KENNEDY: Do you have anything to  
20 add in regard to the generic environmental impact  
21 statement that seems to indicate that spent fuel  
22 pool accident risk is low for extended license  
23 renewal period? In some of the precedental cases  
24 that seem to confirm exclusion of spent fuel pool  
25 accidents --

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1 MR. SHADIS: Well, where NEPA applies,  
2 probability is not an issue. I think the statement  
3 is regardless of low probability. So, you know, the  
4 question of spent fuel accidents, yes, they may be  
5 at low probability, but that's not a consideration.

6 JUDGE KENNEDY: Mr. Fernandez or Mr.  
7 Hamrick?

8 MR. HAMRICK: The going to spent fuel  
9 pool accidents, the Commission has repeatedly held  
10 that SAMAs do not encompass spent fuel pool  
11 accidents. So, as a matter of law, that aspect of  
12 the contention is not admissible. The reason for  
13 that is that the Commission in the guise codified in  
14 part 51 has performed an impact finding that  
15 addresses mitigation for on-site storage of spent  
16 fuel.

17 What we're doing in a SAMA analysis is  
18 supplementing the impact finding for severe  
19 accidents within mitigation analysis. So there is  
20 no overlap here.

21 JUDGE KENNEDY: That's enough. That's  
22 sufficient.

23 MR. HAMRICK: Thank you.

24 JUDGE KENNEDY: Since you were warmed up  
25 there, in your response, in the answer to the

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1 applicant's petition,, on page 67, you quote a  
2 Louisiana Energy Services case for the premise that  
3 NEPA, not requiring precision but an estimate of  
4 anticipated impacts. And I'm just curious about the  
5 applicability of the enrichment proceeding to this  
6 license renewal case.

7 MR. HAMRICK: There is no direct  
8 applicability in terms of the different types of  
9 facilities involved, but there is a direct  
10 applicability about what NEPA requires.

11 NEPA is not limited to enrichment  
12 facilities or reactors. NEPA involves any major  
13 federal action. And what it calls for -- and SAMA  
14 is a NEPA analysis -- is a reasonable estimate. It  
15 does not call for, again, certainty or precision.  
16 It doesn't call for discussion of impacts at the  
17 95th percentile of consequence value. So as an  
18 interpretation of what NEPA requires, it is directly  
19 applicable.

20 JUDGE KENNEDY: In the context of the  
21 SAMA analysis performed within the enrichment  
22 proceeding, there was a NEPA analysis performed for  
23 that particular license application? And then this  
24 ruling was held in the Commission issuance?

25 MR. HAMRICK: I don't -- I am not sure

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1 what type of NEPA analysis was at play in that case,  
2 whether it was a SAMA analysis. The statement is of  
3 broader applicability to what NEPA requires,  
4 regardless of whether you're doing a mitigation  
5 analysis or impact analysis, NEPA has the same  
6 general rules apply.

7 And that general rule is what the  
8 Commission was getting at here. And that is you  
9 don't have to have certainty or precision, but an  
10 estimate is acceptable.

11 JUDGE KENNEDY: Okay. Thank you.

12 JUDGE WARDWELL: Yes. My only question  
13 kind of borders I think on the same area. Because  
14 it is a NEPA analysis, the actual magnitude of the  
15 cost-benefits is not at issue, is it? It's the  
16 relative degree of the various mitigation  
17 alternatives. And then there is still judgment  
18 applied to that.

19 There is no requirement that you do  
20 anything, regardless of the outcome of the SAMA  
21 analysis. Is that correct?

22 MR. HAMRICK: Correct.

23 JUDGE WARDWELL: So because of that, the  
24 actual magnitude of any benefit-cost analysis that  
25 you might come out a number is irrelevant, isn't it?

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1 MR. HAMRICK: It's relevant only as to  
2 the fact that under the Supreme Court's Methael  
3 Valley case. It's incumbent upon agencies to  
4 include a discussion of a reasonable mitigation.  
5 And what we are trying to do here is determine what  
6 potential mitigation techniques, alternatives would  
7 be reasonable. So we're going towards the  
8 requirement from the case law in determining what is  
9 and what is not a reasonable mitigation for Nextera  
10 to identify in its ER.

11 JUDGE WARDWELL: And because of that,  
12 then, it would seem to me that under the benefits  
13 aspect of this, if it's a low consequence, like most  
14 of these are going to be, won't that mask some of  
15 the benefits you are going to have? Because they  
16 are all going to be so low you won't see any  
17 difference in them, where if you used a  
18 deterministic calculation, yes, it might be a higher  
19 value, may look bad on you, but at least it will  
20 start discriminating some of the various options  
21 that are available for mitigation by keeping that  
22 larger values in there deterministically, as opposed  
23 to sugaring them all down to these little numbers so  
24 that they're all just little numbers and you really  
25 can't say much about any of the differences.

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1 MR. HAMRICK: The fact that the numbers  
2 are so small is what is important here. Again,  
3 under Methael Valley, we're looking at reasonable  
4 mitigation alternatives. The question is, is it  
5 reasonable to spend the money, the time, and the  
6 resources to institute or to consider instituting a  
7 mitigation alternative that has a one in a million  
8 chance of being necessary.

9 So in order to determine reasonability,  
10 you have to do a cost-benefit analysis. And the way  
11 you do that is you measure the expected cost, which  
12 is the cost of the SAMA, versus the expected  
13 benefit.

14 You don't do the expected cost versus  
15 the greatest possible benefit. But that is a skewed  
16 analysis. You do the expected cost, what you think  
17 it's going to cost to implement the system,  
18 structure, or component involved.

19 JUDGE WARDWELL: Your benefit is  
20 factored by the low consequence of occurrence. Is  
21 that correct?

22 MR. HAMRICK: Yes. And, again, that is  
23 because the Commission -- this is a mitigation  
24 analysis meant to supplement the Commission's  
25 codified finding, impact finding, about the impacts

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1 of severe accident risks, which itself was  
2 probabilistic. It said the probability-weighted  
3 impacts are small.

4 JUDGE WARDWELL: Right.

5 MR. HAMRICK: And we're jumping off from  
6 that point. So we know we're already small. So  
7 we've got that to say they're small. But now to be  
8 able to start separating these out and comparing  
9 ones, which is part of the evaluation -- it's not  
10 just here is a raw benefit-cost analysis for it, you  
11 also are comparing them between the other  
12 alternatives that are available at a site.

13 JUDGE WARDWELL: To be able to rank  
14 those, I still don't understand why it wouldn't be  
15 more representative, to use a more deterministic  
16 value because it wouldn't get everything down so  
17 small that the numbers are all in that small area.

18 MR. HAMRICK: If you use --

19 JUDGE WARDWELL: I already know it's  
20 going to be of small consequence because we have  
21 already determined that as part of the EIS.

22 MR. HAMRICK: Getting back to what the  
23 Supreme Court said in Methael Valley on mitigations,  
24 in a NEPA analysis, you don't look at a worst-case  
25 scenario. You look at expected.

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1 And if you were to perform a  
2 deterministic approach like you are suggesting, what  
3 you would do, as the Supreme Court said in Methael  
4 Valley, would be to distort the decision-making  
5 process by overemphasizing speculative harms.

6 What we are trying to do is find out  
7 what the actual expected benefit would be. And if  
8 you were to use a deterministic method, you're  
9 helping the scale, so to speak, in making the  
10 particular SAMAs look more attractive than they  
11 otherwise, more reasonable than they otherwise may  
12 be.

13 JUDGE WARDWELL: Thank you. I'm ready  
14 to go on.

15 CHAIRMAN RYERSON: All right. Any  
16 questions on 4B, part B?

17 JUDGE WARDWELL: None.

18 CHAIRMAN RYERSON: Judge Kennedy?

19 JUDGE KENNEDY: No.

20 CHAIRMAN RYERSON: 4C is the Max-2  
21 issue, I believe. Any questions on that?

22 JUDGE WARDWELL: I have one question for  
23 Mr. Shadis. It seems to me 4C is kind of a general  
24 -- we're kind of viewing them as separate  
25 contentions. So that's why I use that phrase.

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1                   What additional does this contention add  
2                   that is not covered by the single issue items of 4D,  
3                   E, and F? It seems like D, E, and F cover all the  
4                   aspects of what's bad with a Mac code. Why do we  
5                   need 4C in there also? Is there something else  
6                   that's there that isn't included already in 4D, E,  
7                   and F?

8                   See how I have nice long questions? I  
9                   give you time to kind of get your answer while I'm  
10                  asking the question.

11                  MR. SHADIS: Let me check with the War  
12                  Department. Just a minute.

13                  (Pause.)

14                  MR. SHADIS: I think with that  
15                  sub-contention, if you will, as in intended to focus  
16                  on the ability of the Mac-S2 program generally to  
17                  provide a realistic consequence assessment. And  
18                  there are a number of factors that we list, an air  
19                  dispersion model, the economic consequences of the  
20                  severe accident.

21                  And, as the licensee alluded to before,  
22                  we object. We think it unwise and unproductive to  
23                  use mean consequence values, as opposed to a more  
24                  conservative consequence value, like in the 95th  
25                  percentile. And that portion of our SAMA contention

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1 is intended to focus there.

2 We had this discussion just a little  
3 earlier about probabilities and their overall effect  
4 on what you could expect. Two things. One is that,  
5 even going there, one needs a realistic assessment  
6 of the potential consequences, worst case, before  
7 you can begin to apply your probabilistic numbers.

8 And I should point out that these  
9 consequence analyses generated under NEPA go to  
10 inform other branches of government. These are  
11 reviewed when monies are budgeted for emergency  
12 planning. They go to local organizations that are  
13 responsible for emergency response. They go into  
14 the discussion, which, by the way, is a very live  
15 discussion of just what agency it is that will be in  
16 charge and whose standards will be applied to  
17 accident cleanup.

18 So they're not just an exercise to fill  
19 in a box, a check box, on here is how we get our  
20 license renewed. They are also used, a very  
21 important tool for dealing with the potential  
22 consequences of an accident.

23 CHAIRMAN RYERSON: All right. Thank  
24 you, Mr. Shadis. I didn't want to cut you off on  
25 the remaining questions that we are likely to just

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1 about finish on time if we answer the questions  
2 directly and as concisely as is possible.

3 I think we're up to 4D. Judge Wardwell?

4 JUDGE WARDWELL: Yes. Let me start with  
5 staff on 4D for the one question I have. Are there  
6 any regulations out there requiring an applicant to  
7 use the Mac-2 code?

8 CHAIRMAN RYERSON: No, Your Honor. The  
9 guidance suggests the Mac-2 code be used.

10 JUDGE WARDWELL: Thank you.

11 CHAIRMAN RYERSON: Mr. Shadis, do you  
12 know of any regulations that require the use of the  
13 Mac-2 code?

14 MR. SHADIS: There are none.

15 JUDGE WARDWELL: And, just for  
16 completeness, Mr. Hamrick?

17 MR. HAMRICK: There are none.

18 JUDGE WARDWELL: Okay. Thank you.  
19 That's all I have.

20 JUDGE KENNEDY: I have just one question  
21 for the applicant, Mr. Hamrick. On page 82 to 83 of  
22 your answer, there is a discussion about the  
23 difficulty of replacing the dispersion modeling in  
24 the Mac-2 code.

25 MR. HAMRICK: Yes.

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1 JUDGE KENNEDY: I guess I'm struggling  
2 with the relevance of that discussion to this  
3 proceeding.

4 MR. HAMRICK: Certainly. To the extent  
5 that petitioners argue that, instead of using the  
6 ATMOSE model, the air dispersion model, that is  
7 embedded in the Mac-2 node, Nextera should plug in  
8 or use, re-perform the analysis using a more complex  
9 air dispersion model, such as Calput or Air Mod,  
10 which you have heard this morning.

11 As the Commission pointed out in the  
12 Pilgrim case, you can't just do that. You can't  
13 just take a different air dispersal model and plug  
14 it in. And the reason why -- assumedly, it could be  
15 done if you sat down with the author or code maker  
16 and went to a lot of time and effort to reconstruct  
17 the code from the ground up.

18 What the Commission said in CLI 10-11  
19 was NEPA doesn't require a research document. It  
20 doesn't require ground-breaking technology or  
21 science to be performed or here software engineering  
22 to be performed. You can use what is the best thing  
23 out there now.

24 And the petitioners have claimed there  
25 are better and better models. They have not claimed

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1 there is a better code that could incorporate those  
2 models and could produce the results that they are  
3 looking for.

4 JUDGE WARDWELL: But that gets back to  
5 my question. There is no regulation requiring you  
6 to use the Mac-2 code. You could do -- and I  
7 wouldn't portray them as new models. You know,  
8 two-dimensional/three-dimensional models have been  
9 around for years in all aspects. And that is kind  
10 of the current state of the art. And then do  
11 continually their SAMA analysis without using the  
12 Mac-2 code.

13 Could that not take place?

14 MR. HAMRICK: I believe you could run  
15 the air dispersal models. And then it would take --  
16 you would either have to come up with a new code  
17 that could take those inputs or physically input the  
18 data.

19 JUDGE WARDWELL: How long do we wait  
20 before we do this? Will we be using a Mac-2 code  
21 100 years from now?

22 MR. HAMRICK: There needs to be a  
23 reasonable alternative that is provided. NEPA  
24 doesn't require, again, the use to go out and tread  
25 new ground and create new codes and that kind of

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1 thing. You can use what is the current state of the  
2 art and current permanently available.

3 The issue of the straight line model,  
4 the petitioners have provided documentary evidence  
5 to show that, for instance, the EPA prefers  
6 different models for its particular applications  
7 with respect to pollutants.

8 However, that doesn't mean that it is  
9 not reasonable for the NRC to rely on --

10 JUDGE WARDWELL: And that will be a  
11 merits issue at hearing if, in fact, this is  
12 admitted, whether or not the one-dimensional flow is  
13 sufficient for your needs. And it may very well be,  
14 but that is a merits issue, isn't it?

15 MR. HAMRICK: It can be if they have  
16 provided sufficient information to show allegations  
17 of fact or expert opinion to show that the use of  
18 the straight line model by Nextera for Seabrook is  
19 inappropriate for some reason. And that is what is  
20 missing here.

21 JUDGE WARDWELL: Thank you.

22 CHAIRMAN RYERSON: Any questions on 4E?  
23 Judge Kennedy?

24 JUDGE KENNEDY: No questions.

25 JUDGE WARDWELL: No questions.

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1 CHAIRMAN RYERSON: 4F? Judge Wardwell?

2 JUDGE WARDWELL: Maybe I'll finish like  
3 I started, Mr. Shadis, and point out that your  
4 answer on page 100, where you said you erred in our  
5 page reference and we apologized. And it was where  
6 on page 100 where you said, "Petitioners cite LRA  
7 appendix E, 2.10. However, the Seabrook SAMA  
8 analysis is provided in attachment F to the ER,"  
9 which has neither a page 2.10, nor a section 2.10.

10 I wondered whether or not you cited the  
11 wrong page or you cited the wrong license  
12 application. I don't know what you're looking for.  
13 Can I help you? I haven't set you on to look for  
14 anything.

15 In your reply, you state on page 43 that  
16 you erred in providing the wrong page reference to  
17 what Nextera stated on page 100 was what you had  
18 cited, which was in appendix E, 2.10. And they  
19 pointed out that Seabrook doesn't have an attachment  
20 E to the ER and doesn't have a section 1.0 or a page  
21 2.10.

22 So it doesn't even look like it was a  
23 page number wrong. It was some other 00

24 MR. SHADIS: Yes.

25 MS. LAMPERT: May I answer that question

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1 quickly?

2 JUDGE WARDWELL: Please?

3 MS. LAMPERT: I am at fault. I  
4 referenced Govern because that's what I have been  
5 involved in. However, I did read their application.  
6 And they also used a --

7 JUDGE WARDWELL: You don't have to bring  
8 this up again here as --

9 MS. LAMPERT: I'm sorry. I apologize.

10 JUDGE WARDWELL: Yes. You don't have to  
11 apologize. I was just pointing out where the  
12 difficulty comes in as we struggle with this and the  
13 time it takes to deal with misquotes like this.

14 So that's -- I only brought it up  
15 because I thought it was a wrap-up in bringing this  
16 right back to the circle where we started two hours  
17 ago.

18 CHAIRMAN RYERSON: Judge Kennedy, did  
19 you anything?

20 JUDGE KENNEDY: No. I'm good.

21 JUDGE WARDWELL: Not after that modest  
22 disclosure. He didn't dare.

23 CHAIRMAN RYERSON: All right. Well, we  
24 ran three minutes over, but that's pretty close.

25 Yes?

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1 MR. SMITH: Your Honor, I did have one  
2 more point I wanted to make. I overheard in our  
3 discussion at one point that the applicant would not  
4 need to actually implement any SAMAs that were  
5 identified as cost-beneficial, but the Commission in  
6 Pilgrim CLI 10-11 did point out on a footnote -- I  
7 believe it's 26 on page 7 of the slip opinion --  
8 that because none of the seven potentially cost  
9 SAMAs on adequately managing the effects of aging  
10 and then implemented as part of the license renewal  
11 safety review, that it indicates that if a SAMA is  
12 identified as cost-beneficial and is related to the  
13 effects of aging, it would need to be implemented by  
14 the applicant as part of the --

15 JUDGE WARDWELL: Is that true as a  
16 NEPA-type analysis? I mean, because the same as  
17 NEPA, you could show that there are other  
18 alternatives that are much more environmentally  
19 protected but decide not to implement them, to stay  
20 with your chosen one and document it or present it?  
21 Isn't that the same as in that SAMAs or am I wrong  
22 in that?

23 MR. SMITH: I think what the Commission  
24 is saying in Pilgrim is that if a SAMA is identified  
25 as cost-beneficial as part of the NEPA review, then

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1 the NRC would require the applicant to implement  
2 that provided it is age-related, of course.

3 JUDGE WARDWELL: Yes. Oh, yes.

4 CHAIRMAN RYERSON: Thank you.

5 MR. SMITH: Thank you.

6 CHAIRMAN RYERSON: All right. That  
7 largely covers what we intended to cover today, I  
8 think. As we stated earlier, Mr. Shadis has up to  
9 seven days, which will probably do it in six, to  
10 submit a revised declaration for Mr. Blanche.

11 And the other parties will have seven  
12 days after receiving that if they wish to object to  
13 any aspect of it presumably as going beyond the  
14 original filing other than what might be allowed  
15 under Commission precedent.

16 Our job now is to take all of the  
17 information we have received plus what we may  
18 receive and may acknowledge, both today and then  
19 primarily in the written pleadings, which, as I  
20 said, really literally number hundreds of pages and  
21 make a decision about the standing of the  
22 petitioners and the admissibility of their  
23 individual contentions. I think, as you all know,  
24 the rule is, each participant to become a party must  
25 both establish standing and demonstrate at least one

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1 admissible contention.

2 Yes?

3 MS. MONTEITH: Your Honor, you had a  
4 question for me that I was going to answer later.

5 CHAIRMAN RYERSON: Oh, Cleppy, the  
6 Cleppy case, yes.

7 MS. MONTEITH: Correct. It's my  
8 understanding that Cleppy does not address -- your  
9 question was whether Cleppy speaks to the time  
10 frame, the alternatives analysis in an ER NES must  
11 consider. Is that correct?

12 CHAIRMAN RYERSON: That was the  
13 question, yes.

14 MS. MONTEITH: Okay. Cleppy doesn't  
15 directly address that question but to clarify a  
16 little bit what we were writing, we read that in  
17 conjunction with the Commission's decision in HRI,  
18 in which they determined that the applicants in its  
19 ER need only consider the range of alternatives that  
20 are capable of achieving the goals of the proposed  
21 action.

22 And the Board at Indian Point,  
23 discussing a slightly similar contention, read that  
24 case as standing for the goals, capable of achieving  
25 the goals, of the proposed action would be the

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1 generation of base load energy for an additional 20  
2 years, the license renewal period, not that that  
3 answers your question.

4 CHAIRMAN RYERSON: Thank you.

5 MR. SHADIS: Your Honor, may I raise --

6 CHAIRMAN RYERSON: Yes?

7 MR. SHADIS: -- just raise one point?

8 This is burning with me. The licensee has filed two  
9 amendments in October, late October, and in  
10 November. And they regard the subject matter of our  
11 contentions 1 and 3, the cables and piping. And  
12 they have also in their answer referenced these  
13 amendments, offering that the changes made moot  
14 issues that we have raised, points that we have  
15 raised, in our filing.

16 And I would just like to plead that we  
17 understand that the license renewal process is a  
18 dynamic process. And they are fully permitted to  
19 make amendments.

20 At the same time, there have been  
21 numerous rulings that the intervenors should be  
22 accorded an opportunity to file either comment or  
23 contentions on those application changes.

24 CHAIRMAN RYERSON: Is that a question or

25 --

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1 MR. SHADIS: No. I just wanted to make  
2 that. I wanted to make that --

3 CHAIRMAN RYERSON: I understand. And  
4 you'll have to decide what, if any, action you want  
5 to take. And we'll have to decide whether it is  
6 timely given -- as you recognize, there is a  
7 continuous process in these applications. And, from  
8 a petitioners' standpoint, it may seem like a moving  
9 target because, frankly, I think sometimes it is of  
10 necessity. And obviously you have to decide what,  
11 if anything, you wish to do at this point. And  
12 we'll consider it.

13 MR. SHADIS: Thank you. Thank you. I  
14 appreciate that.

15 CHAIRMAN RYERSON: Okay. Again I think  
16 on behalf of the full Board, I would like to thank  
17 everyone today, all of the participants. Your  
18 responses were helpful for the most part. You tried  
19 to answer our questions very directly. And we  
20 appreciate that.

21 And again I want to thank the City of  
22 Portsmouth for making this facility available and  
23 for making it available early with the police here  
24 so we could get you all in before the time that this  
25 was scheduled to start.

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1 Do either of the other judges have any  
2 comments, Judge Wardwell or Judge Kennedy?

3 (No response.)

4 CHAIRMAN RYERSON: We stand adjourned.  
5 Thank you.

6 (Whereupon, the foregoing matter was  
7 concluded at 1:07 p.m.)  
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Name of Proceeding: Oral Argument

Docket Number:           50-443-LR

ASLBP Number:           10-906-02-LR-BD01

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