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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL
ORAL ARGUMENT

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In the Matter of: : Docket No.
Virginia Electric and Power : 52-017-COL
Co. d/b/a Dominion Virginia :
Power and Old Dominion : ASLBP No.
Electric Cooperative, : 08-863-01-COL
Applicant. :

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Thursday,
March 3, 2011

Louisa County Office Building
1 Woolfolk Avenue
Louisa, Virginia 23093

BEFORE THE PANEL:

- RONALD M. SPRITZER, CHAIRMAN
- RICHARD F. COLE, JUDGE
- ALICE C. MIGNEREY, JUDGE

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

9:30 a.m.

1 CHAIR SPRITZER: On the record. Good
2 morning, my name is Ron Spritzer, I'm the Chairman of
3 this Atomic Safety and Licensing Board, which is
4 assigned to the North Anna Unit 3 combined license
5 application. This is docket number 52-017-COL and
6 ASLBP number 08-863-01-COL.
7

8 We are here, today, to hear oral argument
9 on the admissibility of two new proposed contentions,
10 which were filed in response to the June 2010 revision
11 to the combined license application filed by Dominion
12 Power.
13

14 The purpose of the hearing, as I have
15 indicated, is to hear oral argument on two new
16 proposed contentions.

17 I'm the Chairman of the Board, I'm a
18 lawyer, we have two other judges, here, who I will
19 allow to introduce themselves.

20 Judge Cole?

21 JUDGE COLE: Yes. I'm Richard Cole, I'm
22 an environmental technical specialist. I also served
23 on the ESP Board, when we had the hearings, here, in
24 the area.

25 JUDGE MIGNEREY: I'm Alice Mignerey, I'm

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1 a part-time technical judge. I'm a nuclear chemist,
2 and I teach nuclear and general chemistry at the
3 University of Maryland.

4 CHAIR SPRITZER: And, seated to the left
5 of Judge Mignerey is our law clerk, on this case, Josh
6 Kirstein.

7 Before I go any further let me thank the
8 Louisa County government for being gracious, and
9 hospitable enough, to allow us to use their excellent
10 facility here.

11 We appreciate their efforts. We have been
12 their guest before, but they have been kind enough to
13 put up with us at least one more time.

14 For members of the public, if you have
15 cell phones, please silence them. This is not a public
16 participation proceeding, the public is welcome to sit
17 and listen. But the argument, today, will be
18 presented exclusively by the counsel, or
19 representatives of the party.

20 We are here to hear oral argument, not to
21 hear new evidence or to take public statements, not
22 today.

23 In terms of our procedure, today,
24 depending on how fast we move we may, or may not, take
25 a ten minute break. We have allowed, approximately,

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1 an hour for argument, the total of an hour for the
2 argument on each of the two contentions.

3 So we will see how things are going. But
4 if any of the participants need to take a break,
5 please let us know.

6 Let me ask the counsel, who will be
7 participating, to introduce themselves. And we can
8 start with the Intervenors.

9 MR. RUNKLE: May it please this Honorable
10 Board. My name is John Runkle, representing the
11 Intervenor, Blue Ridge Environmental Defense League,
12 and the People's Alliance for Clean Energy.

13 With me, at counsel table, is Louis
14 Zeller, who is BREDL's science director, and has filed
15 some of the earlier more technical contentions. So I
16 may need to consult with him.

17 CHAIR SPRITZER: Okay. You are free to
18 consult but for each contention you will be the one
19 speaking?

20 MR. RUNKLE: Yes, sir.

21 CHAIR SPRITZER: And for the Staff?

22 MR. WEISMAN: Your Honor, I'm Bob Weisman,
23 for the NRC Staff. I will be arguing Contention 12.
24 And with me is Marsha Carpentier, who will be arguing
25 Contention 13.

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1 CHAIR SPRITZER: All right. And for the
2 applicant, Dominion?

3 MR. LEWIS: Good morning, Judge Spritzer.
4 My name is David Lewis, I'm with the law firm of
5 Pillsbury Winthrop Shaw Pittman, representing
6 Dominion.

7 With me, at counsel's table, is Lillian
8 Cuoco, Dominion's senior counsel.

9 CHAIR SPRITZER: Very good, glad to have
10 all of you here. The Staff and Dominion will be
11 dividing 30 minutes among yourselves. Perhaps when
12 you get started you can let us know what your division
13 will be. That will make it a little easier.

14 MR. WEISMAN: I think, Your Honor, we plan
15 on dividing the time evenly.

16 CHAIR SPRITZER: Okay, fine.

17 MR. WEISMAN: Yes, please.

18 CHAIR SPRITZER: Do you want me to let you
19 know when you are approaching your -- the end of your
20 15 minutes?

21 MR. WEISMAN: Yes, please.

22 CHAIR SPRITZER: Okay. I will do the same
23 for the Intervenors, if you would like.

24 Very good. All right, if there are no
25 questions about our procedure, here today, we will go

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1 ahead and get started. The people in the back, are
2 you able to hear everything all right so far? Okay,
3 good.

4 PARTICIPANT: We can hear you, but we
5 can't hear people facing that way.

6 CHAIR SPRITZER: All right. Well, why
7 don't we get started, keep your voice up as much as
8 possible. If somebody wants to raise their hand back
9 there, if you can't hear, we will try and keep an eye
10 out for you.

11 And if you are not able to hear we will
12 ask people to speak up.

13 JUDGE COLE: Or you can move up closer to
14 the front.

15 JUDGE MIGNEREY: Yes, you don't have to
16 sit in the back.

17 CHAIR SPRITZER: There is no extra charge
18 for sitting in the front row. Okay, why don't we get
19 started. We will start with Contention 12, what we
20 refer to as Contention 12, that is what you labeled
21 Contention 1.

22 This contention, for members of the
23 public, it deals with, essentially with the question
24 of whether, what kind of cooling tower system should
25 be used for North Anna 3, if the reactor is built.

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1 Whether it should be a dry cooling tower,
2 which essentially uses air, rather than water, to cool
3 the reactor, or cool the steam from the reactor.

4 Or whether it should be, as proposed,
5 currently proposed, as I understand it, a combination
6 of wet and dry cooling tower. Ultimately this is a
7 question about impacts on the lake, whether it would
8 be better for the lake to have a dry cooling tower, or
9 a wet/dry cooling tower.

10 Why don't you get started, then?

11 MR. RUNKLE: As I said, my name is John
12 Runkle, representing the Intervenors in this case.
13 And, just to be clear on the record, the -- in the
14 October 4th, 2010 filing, by the Intervenors, we
15 called these New Contentions 1 and 2.

16 We think 12 and 13 probably makes more
17 sense and we will deal with that. And if we could
18 reflect that in the record.

19 Now, before we get started to answer, to
20 respond to those questions that you raised, that you
21 would like to hear more information about, really have
22 two points to make.

23 The first is, in reviewing the pretty
24 wholesome record in this case, looking at the ESPN,
25 and the COLA application for the boiling water

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1 reactor, and then the pretty complete revision on the
2 pressurized water reactor, this may be, this may be a
3 new experience for the NRC panels, is to actually go
4 through this process of going through an ESP, and then
5 into a COLA, and then changing the COLA, again, to
6 something substantially different.

7 So our position is that when Dominion came
8 back with a completely new COLA on the pressurized
9 water reactor, at that point the whole process should
10 have been stopped, and the ESP should have been
11 reviewed to see if the plant parameter envelope, that
12 was used in the ESP was actually covered, both the
13 boiling water reactor, and the pressurized water
14 reactor.

15 And whether at that same point, after that
16 review of the ESP, and the different environmental
17 statements, whether the -- whether the whole COLA
18 application should have been opened up to other
19 members of the public, and other agencies, under
20 review, as if it had been an absolutely new COLA.

21 CHAIR SPRITZER: Well, we are familiar,
22 this was, essentially, the argument that BREDL made in
23 Contention 11. We have already ruled on that.

24 So you are welcome to make that argument
25 on Appeal, if you have -- if you decide to pursue an

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1 appeal, and the opportunity to do so arises. But for
2 purposes of today we are satisfied, I think, that we
3 are not going to reopen the entire proceeding to new
4 petitions for hearing.

5 But we did give BREDL the opportunity to
6 file these two new contentions in response to the
7 revised application.

8 MR. RUNKLE: Having said that, and we
9 appreciate the opportunity to be unique, to be able to
10 offer contentions, as nobody else was.

11 But we also, I think, that that conundrum
12 of the new COLA, on a new thing, is very relevant to
13 both of these new contentions. And we need to look at
14 plant parameter envelopes that were written, at the
15 ESP stage, knowing that there -- that Dominion knew
16 that they were planning to use a boiling water
17 reactor.

18 And any substantial differences with that,
19 with the pressurized water reactor, may have been
20 subsumed under well, we are not going to use that, so
21 we won't look at that as closely.

22 And I think that goes directly into what
23 your questions are on, if we would address Contention
24 12, first, looking at the, really, the differences
25 between the boiling water reactor and the pressurized

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1 water reactor.

2 And as our expert in his declaration, Mr.
3 Gundersen stated, he recommended that for a
4 pressurized water reactor at the site, we need to be
5 looking at other kinds of ways to treat the thermal
6 discharge.

7 And recommended an air condenser, as an
8 example, of something that was not considered at the
9 ESP because it is unique to the specific design of the
10 pressurized water reactor, now, that we have a
11 coolant.

12 CHAIR SPRITZER: Just let me ask, when you
13 -- this is one of the questions, I think, we posed.
14 The term air condenser, I have seen the, what is
15 usually, what is referred to in the Final
16 Environmental Impact Statement, for the ESP, was a dry
17 cooling tower.

18 Are those the same thing, in your
19 understanding?

20 MR. RUNKLE: They are not. And that goes,
21 really, into your question number 3. They are not the
22 same thing. In looking at a, sort of, generalized
23 plant parameter design, that has a dry cooling system,
24 as opposed one that is unique to the pressurized water
25 reactor, in the specific design that Dominion has come

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1 up for that site.

2 There is a substantial difference in the,
3 if I could get into the differences between the
4 boiling water reactor, the pressurized water reactor,
5 and the design envelope, I think those are important
6 considerations.

7 CHAIR SPRITZER: All right. As long as
8 you stick to what is in Mr. Gundersen's declaration.
9 We don't want to be adding new, we don't want to have
10 anyone testifying, as a representative today.

11 But if you can point us to specific parts
12 of Mr. Gundersen's declaration, or anything else, that
13 is in the record before us, that would certainly be
14 helpful.

15 MR. RUNKLE: And I hate to presume, but
16 I'm not an expert in thermal discharge, and those
17 kinds of things. So I relied on Mr. Gundersen and
18 asked him to point to his parts of his declaration
19 that responded to your questions.

20 But I would like to, at least, suggest to
21 this panel, is that you can't presume, based on your
22 own knowledge, that your knowledge and expertise is
23 any better or any worse than Mr. Gundersen.

24 And so if he is talking about, from an
25 expert's point of view, of a factual basis for his

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1 conclusion, that is what we need evidentiary hearing.

2 Those are the reasons why you need to
3 introduce, you know, have the contention heard.

4 CHAIR SPRITZER: Well, I certainly agree
5 that we are not, at this proceeding, it is not our
6 role to decide whether a particular witness is
7 credible, or has a strong foundation for his opinion.

8 We are, simply, here to figure, to decide
9 whether it is worthwhile going on to the next stage of
10 holding an evidentiary hearing. So --

11 MR. RUNKLE: But your questions get into
12 the very substance, the technical aspects behind those
13 recommendations. And we are going beyond, I think,
14 just legal arguments to whether the contention should
15 be admitted.

16 We are getting into arguments why, what
17 the differences are. And if somebody was going to
18 testify on the stand, could talk to you in detail what
19 the difference is between the boiling water reactor,
20 or a pressurized water reactor.

21 And why those weren't covered in the plant
22 parameter envelope.

23 JUDGE COLE: It is, sometimes, very
24 difficult to stay away from the merits, but we do try.

25 Is it my understanding that Mr. Gundersen

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1 believes that the dry cooling system is different from
2 an air condenser system?

3 MR. RUNKLE: Yes, because the dry cooling
4 system, as I understand it, from his declaration, is
5 on a boiling water reactor, and it is designed
6 specific for that.

7 With a -- with an air condenser, it can be
8 used additionally with a dry cooling system. But it
9 is a different beast.

10 JUDGE COLE: But it is, both of them are
11 air condenser systems, aren't they?

12 MR. RUNKLE: That, I mean, that is a
13 nuance that I think that, you know, I have looked up
14 the term several times, looked up what an air
15 condenser system is.

16 Yes, I think in the broader definition,
17 they are both air condenser systems.

18 JUDGE COLE: Yes.

19 MR. RUNKLE: But looking at the difference
20 between a boiling water reactor that has water going
21 through it and comes out, as opposed to, you know, the
22 pressurized water, that has a closed loop and could
23 be, possibly a closed loop.

24 And that is a substantial difference.
25 With the pressurized water reactor, the thermal

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1 output, and the thermal load on the lake itself, was
2 much higher than the thermal output from the boiling
3 water reactor.

4 And that is a real consideration.

5 CHAIR SPRITZER: Of course. What we have
6 to look at, though, is when the Environmental Impact
7 Statement was done, for the ESP, they used what they
8 call a plant parameter envelope.

9 It sounds like you have already mentioned
10 that, you are familiar with the term. It wasn't so
11 much focused on a boiling water reactor as it was a
12 reactor with a certain range of characteristics.

13 And what the Staff and Dominion are
14 telling us is, yes we have a new reactor, but it falls
15 within that plant parameter envelope, so we can't
16 revisit that issue, because they have already
17 addressed it or, more precisely, resolved it at this
18 stage.

19 That is their argument, but --

20 MR. RUNKLE: But if --

21 CHAIR SPRITZER: -- what is your response
22 to that?

23 MR. RUNKLE: But if you are looking at the
24 design control documents, for the pressurized water
25 reactor, it is looking at that design, comparing it to

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1 the envelope, and looking at what it is under the
2 COLA.

3 What they have done, in the COLA, I think
4 is going back to the earlier design that the initial
5 COLA, with the boiling water reactor rejected on, at
6 least Unit 4.

7 Which said there should be no thermal
8 discharge into the lake. And the NRC Staff found that
9 out, and thought a wet/dry combination, in what then
10 Unit 3 boiling water reactor, had some effect on the
11 lake.

12 And, certainly, that was a consideration.
13 But felt that, you know, a completely closed loop dry
14 system would have a far less impact on thermal output,
15 thermal load, the blow-down of the chemicals and,
16 also, the complete water use.

17 Which I think is a substantial difference
18 between that two that wasn't, is an issue in the COLA.
19 It was an issue in the initial COLA on the boiling
20 water reactor, and was not considered in the ESP.

21 So that is -- and the third difference
22 here is, I guess, it would be the fourth difference,
23 is that really the steam and condensate from the
24 proposed pressurized water reactor, it would be non-
25 reactive, because the water that could be reactive is

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1 in the closed loop.

2 So there is a substantial difference here,
3 and -- that hasn't been addressed so far.

4 JUDGE COLE: But I believe the Staff and
5 Applicant argue, strongly, that all of that was
6 evaluated in the ESP hearing, the different types of
7 cooling systems, and the alternatives.

8 MR. RUNKLE: And, I mean, and our position
9 is, that looking at the ESP, sir you sat through
10 arguments on that, that this, as a pressurized water
11 reactor, has the potential to minimize or even almost
12 eliminate, impacts on the lake if it changes the
13 system into the one that Mr. Gundersen, in his
14 declaration, was recommending.

15 And so, and even in the ESP, looking at
16 two reactors for, at least, for one reactor the Staff
17 said, if there is no discharge, into the lake, that is
18 better for the lake.

19 And we are saying that with the
20 pressurized water reactor, not only is there no, there
21 is far less impact on the lake through the thermal
22 discharge, there is far less water uses of that lake.

23 You don't have to be concerned about some
24 of the radioactive aspects, so the blow-down and the
25 chemicals associated with the boiling water reactor.

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1 So in some way the pressurized water
2 reactor is a better design, in particular, if there
3 is, with the condenser and other kind of, you know,
4 sort of dry technologies on that.

5 This is a real opportunity, and I think
6 that as the Contention says, this is something that
7 needs to be argued out. If you want, if this Board
8 wants to minimize the impact of the lake, as many
9 different ways as it can, and as is stated in one of
10 the things, this is a recreation lake, people are on
11 there.

12 And, actually, as I was doing research on
13 this, the use of the lake is actually before the
14 Supreme Court of Virginia. Blue Ridge Environmental
15 Defense League v the Commonwealth of Virginia, about
16 Dominion's ability to use the lake as a heat sink,
17 anyway.

18 And so there are, in the context of that,
19 there are a lot of things going on here. And the
20 opportunity is to, is to really minimize those
21 impacts.

22 And as one thing that we suggest could be
23 a possibility, is modify the ESP, what is at 52-39E,
24 if you can amend the ESP to reflect these new
25 opportunities, with this pressurized water reactor, to

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1 maybe not eliminate the impacts, but certainly could
2 minimize them much more, to a much lesser degree than
3 you could on the other things.

4 CHAIR SPRITZER: The Virginia Court, the
5 subject of the Virginia case, of course, is not before
6 us. I'm curious, though, is that -- has the Court
7 scheduled, I take it that was, was a certiori type
8 grant --

9 MR. RUNKLE: Yes.

10 CHAIR SPRITZER: -- that was discretionary
11 Court filing?

12 MR. RUNKLE: The briefs have been filed,
13 and the case has not been scheduled. So it may be
14 this spring, it may be, who knows, September. So it is
15 court time, so we will have to determine what happens
16 on that.

17 CHAIR SPRITZER: As I understand it, the
18 issue has something to do with whether, what the
19 appropriate point is for measuring the discharge,
20 whether it is -- whether the waste heat treatment
21 facility discharges into the rest of the lake, or the
22 discharge canal, --

23 MR. RUNKLE: And how --

24 CHAIR SPRITZER: -- something along those
25 lines?

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1 MR. RUNKLE: Yes. And how much of the --
2 how much of the thermal impacts can affect the lake.
3 And that is why it is relevant to this discussion.

4 I mean, that -- if the pressurized water
5 reactor had no discharge into the lake, there wouldn't
6 be a problem with thermal and, you know, at least that
7 part of the civil lawsuit could go away.

8 CHAIR SPRITZER: Well, I have read the
9 Staff's, the FEIS section, from the ESP, that dealt
10 with this issue. And they acknowledge that there are,
11 certainly, benefits, environmental benefits to using
12 a dry cooling tower, that is the term they used.

13 They did, however, also say that there
14 were other issues that they were concerned about,
15 essentially the cost, and the fact that you have to
16 use a lot of electricity to power the dry cooling
17 tower, which takes away from the benefit -- would
18 require the use of electricity that, otherwise, would
19 be available to be sold to the public.

20 It is more, not so much that they were
21 saying that it was not a good idea environmentally,
22 but that they thought that there were other issues
23 that outweigh the environmental benefits.

24 MR. RUNKLE: But the --

25 CHAIR SPRITZER: From our point of view it

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1 is not so much a question of deciding whether we agree
2 with them or not, as did they address this issue, and
3 resolve it at the ESP stage, such that we really can't
4 get into it again, even if we thought there was some
5 merit to your argument on the substantive issue.

6 MR. RUNKLE: Well, I think the argument
7 that it would cost more, or use more power to, with
8 sort of the dry systems and the air condenser, I think
9 is a -- it is a red herring, on it, as an argument.

10 Because the pressurized water reactor has
11 a higher capacity, and will be, can generate more
12 megawatt hours, and that kind of think. So even, I
13 think it is 15 percent, is what is on the record, and
14 if it increases by seven percent.

15 So it is not a good comparison. Yes,
16 there will be more power use, but you will have a
17 reactor that will produce more power.

18 And so if everything is looked at by cost,
19 then I think that goes to the reason why we look at
20 the, we need to reopen the ESP on that.

21 If decisions are made, now, because it
22 costs too much, and that wasn't addressed in the ESP,
23 it's amend the ESP and look at the various costs, and
24 the differences between a pressurized water reactor,
25 its cost, its impact on the lake, impact on both

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1 thermal on the lake, pollution, radioactivity.

2 CHAIR SPRITZER: But is there anything in
3 what you have put before us, that would suggest that
4 the cost analysis would be different, and more
5 favorable to your position, with the pressurized water
6 reactor as opposed to a boiling water reactor, the
7 boiling water reactor that was the ESBWR, the reactor
8 that was previously proposed?

9 MR. RUNKLE: Are you -- if we are looking
10 just at dollars, I mean, that is an analysis that
11 could be done. But if we are looking at dollars,
12 thermal impact, pollution, chemical pollution impact
13 on the lake, radioactivity in the lake, and those
14 kinds of issues, water use of the lake.

15 If you want to throw those into cost and
16 benefits, that is a much different analysis than
17 saying, well this is going to cost, you know, hundreds
18 of millions more than otherwise it would be.

19 And the difference is, I think, that what
20 we have now, we have a COLA on a pressurized water
21 reactor, that goes outside the envelope, because it
22 is, you know, it is a much different, I think it is a
23 much different beast than what was in everybody's mind
24 when the ESP came out.

25 JUDGE COLE: Sir, you said it was outside

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1 the envelope. Do you have the figures for that, do
2 you know what the envelope was, and how far it was
3 exceeded, if it was exceeded?

4 MR. RUNKLE: Well, I'm looking at, from
5 looking at what the pressurized water reactor, the
6 difference between that, the impacts of that, and the
7 impacts of the boiling water reactor.

8 And I'm coming in from that direction as
9 opposed to saying, here is what the envelope looked
10 like, and here is what a boiling water reactor --

11 JUDGE COLE: But there was a figure for
12 the thermal load envelope in the ESP document. And
13 are you saying that was exceeded, or has been
14 exceeded?

15 Because I don't think the numbers are
16 there.

17 MR. RUNKLE: No, I'm not saying that those
18 numbers aren't --

19 (Pause.)

20 JUDGE COLE: But, anyway, the numbers
21 either is there, or it isn't there, or hasn't been
22 exceeded. So that is a factual matter that can be
23 checked.

24 MR. RUNKLE: Yes, and I would be glad, I
25 mean, to check that with my expert. I think that the

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1 more relevant figures for the pressurized water
2 reactor produces more power, produces much higher
3 thermal output, and thermal load.

4 And has, at the same time, has the
5 potential to have very little impact on the lake,
6 either through the, you know, the gallon per minute,
7 versus 8,600 gallons per minute, on a boiling water,
8 just water use is a considerable difference.

9 And in, as a closed loop system. And that
10 is something that, you know, I don't know how far back
11 we need to go into the ESP, but it certainly seems
12 that the viable contention is that we need to be
13 looking at the way, under NEPA, looking at the COLA,
14 how to minimize the impacts on the lake.

15 There is a viable alternative that hasn't
16 been brought before you. Our expert declaration says
17 that this is, this is the best way to minimize those
18 impacts.

19 JUDGE COLE: Mr. Runkle, in the ESP
20 hearing we evaluated what the impact was, and we came
21 to certain conclusions on that, they are stated
22 clearly in the ESP.

23 And it is, generally, you can always
24 improve on a situation, you can put in another system,
25 you can dry cool everything. You could have taken the

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1 heat discharge, in units 1 and 2, and put cooling
2 towers on them to reduce the heat load on the lake.

3 But there has to be a balance. And that is
4 what the ESP hearing did. It looked at those numbers,
5 and it made a decision, a balance as to what was the
6 system that was acceptable, from the viewpoint of the
7 Nuclear Regulatory Commission regulations.

8 MR. RUNKLE: But looking at the COLA, on
9 the boiling water reactor, at that point there were
10 two reactors --

11 JUDGE COLE: Right.

12 MR. RUNKLE: -- and for one, for unit 4,
13 the NRC staff concluded that no discharge was the best
14 alternative.

15 JUDGE COLE: But, of course, there wasn't
16 more capacity left to absorb the additional heat, on
17 the lake.

18 MR. RUNKLE: And that is the difference
19 between -- looking at the pressurized water reactor,
20 is hotter and has less impact of the blow-back
21 chemicals and all that kind of thing, and the water
22 use.

23 So I think my time is about up.

24 CHAIR SPRITZER: You have about seven more
25 minutes. You don't have to use it, if you don't want.

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1 It is not a requirement to talk for seven more
2 minutes.

3 JUDGE COLE: Of course we interfered with
4 your presentation a little, too, so we will give you
5 a little more time.

6 CHAIR SPRITZER: Let me ask one -- you
7 mentioned, several times, the chemical effluents.
8 Now, my reading of the ESP FEIS, the Staff and
9 Dominion's counsel may correct me if I'm wrong.

10 But my reading is that that was not
11 resolved at the ESP stage, they didn't really have
12 data, at that point, on what the effluent would
13 consist of, that would be discharged into the lake.

14 And I don't, I haven't read the Staff's
15 response, or the Applicant's, to argue otherwise. But
16 -- so that issue seems to be unresolved at the ESP
17 stage.

18 But what they do say is the discharge was
19 disclosed in the original combined license
20 application, that is the one for the ESP BWR, the
21 environmental report, the new environmental report for
22 the APWR doesn't change those numbers, at least, not
23 in any material way.

24 So this was an issue that should have been
25 raised in the initial petition for a hearing, if you

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1 wanted to, if you client wanted to bring it before the
2 Board, that is any issue relating to the pollutants,
3 and the effluent, that would be discharged to the
4 lake.

5 But you have a response to that argument?

6 MR. RUNKLE: Well, I mean, we understand
7 that there are site-specific considerations and design
8 considerations that need to come up in a COLA that
9 were not dealt with in the ESP.

10 And this is merely one of them. In
11 hindsight it would have been futile to raise any issue
12 about a boiling water reactor, at the time that the
13 initial petition for hearing was raised, because two
14 years later they have gotten rid of that, now it is a
15 pressurized water reactor.

16 I mean, that would have been a futile
17 exercise, even if contentions would have been
18 admitted, we would have had hearings on them,
19 something else would have come up under the
20 pressurized water reactor.

21 JUDGE COLE: But, Mr. Runkle, in the ESP
22 hearing we had eight different types of reactor
23 systems proposed, and we had an umbrella that,
24 supposedly, was over -- described the numbers
25 associated with their system.

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1 And exceeded all of the eight proposals.
2 That is why they did it that way. They weren't sure
3 what kind of reactor they were going to use.

4 MR. RUNKLE: And, I mean, I will have to
5 fall back, at that point, on the declaration of Mr.
6 Gundersen, who reviewed the ESP, and those envelopes
7 and said, here is an alternative that he, you know,
8 whether it is in the envelope, or out of the envelope,
9 it is -- our contention is that it is a much better
10 solution to thermal problems on the lake, use of the
11 water at the lake, the chemicals into the lake, and
12 the radioactivity into the lake.

13 So those are the -- I mean, those are four
14 very important factors that may have been addressed in
15 the ESP. But given the COLA that is in front of us,
16 I think that is very important, is that we have the
17 opportunity, at this point, to reduce the impact on
18 the lake.

19 We have a new COLA in front of us, a new
20 design, that could really reduce a whole lot of those
21 impacts that maybe the first COLA went around. Or
22 maybe the ESP went around.

23 But we have the opportunity now, and we
24 think it is -- actually our expert is calling it, it
25 is an exciting opportunity. I don't know if I would

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1 go that far.

2 But it is certainly something that needs
3 to be addressed. And the contention is, what we have
4 in the COLA should be better.

5 CHAIR SPRITZER: I suppose, if you win
6 your case in the Virginia Supreme Court, Dominion on
7 its own may have to take a look at revisiting the
8 alternative you favor, regardless of what we rule
9 here.

10 In other words, if the discharge, the
11 point where the discharge is measured, is moved back,
12 they may have some problems with compliance, if that
13 is the ultimate state of affairs.

14 MR. RUNKLE: Well, there may -- there
15 would be problems with the existing reactors, as using
16 the entire lake as a heat sink.

17 But that, I think, and in just sort of the
18 general context that is in play, right now, on the
19 water issues. But so would be your decision, is to,
20 after hearing, decide that under the pressurized water
21 reactor design, we could do a condenser dry loop that
22 has no impacts on the lake.

23 And I think that is the consideration, and
24 that is the contention in front of you.

25 JUDGE COLE: No, I think we understand

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1 your position, thank you.

2 CHAIR SPRITZER: All right, you might have
3 an extra minute or two, do you have anything further,
4 or should we move --

5 MR. RUNKLE: If I could just, if there is
6 something I absolutely need on rebuttal, give me a
7 minute on it?

8 CHAIR SPRITZER: Okay, that would be fine.
9 I will give you three minutes for rebuttal.

10 Who is going to speak first for the Staff
11 and the Applicant?

12 MR. WEISMAN: This is Robert Weisman, from
13 the NRC Staff, Your Honor. And I think the Staff is
14 accustomed to speaking last. We would request that
15 the -- if the Applicant is willing, that they would go
16 ahead, and if you have no objection to that?

17 CHAIR SPRITZER: That is fine.

18 MR. LEWIS: I'm happy to go next. Thank
19 you, Your Honor.

20 CHAIR SPRITZER: Please proceed.

21 MR. LEWIS: Dominion's applicant
22 references an ESP. That ESP was the result of a four
23 year proceeding that had a major focus on what would
24 be the environmental impacts of this plant, and is the
25 site suitable.

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1 Contrary to BREDL's assertion, the ESP
2 proceeding did not presume any technology, it was not
3 based on a boiling water reactor. It was based on a
4 plant parameter envelope that considered both boiling
5 water reactors, and pressurized water reactors.

6 A major focus of that proceeding was on
7 the aquatic impacts. Dominion originally proposed
8 once-through cooling, and changed to the currently
9 proposed hybrid wet and dry system, to balance, and
10 mitigate the impacts of heat.

11 And, in fact, the revised cooling system,
12 in the ESP proceeding, mitigated the heat entirely.
13 This was not only a matter that was addressed in the
14 ESP proceeding, but it was litigated, and resolved on
15 summary disposition.

16 And in the Licensing Board's Decision, on
17 Summary Disposition, the Licensing Board noted that
18 BREDL, as the Intervenor, agreed that the heat
19 discharged to the lake would now be insignificant.

20 In fact the testimony, and the
21 environmental impact statement in the ESP proceeding
22 indicated that the temperature rise, from unit 3,
23 would be one-tenth of a degree Fahrenheit.

24 And the NRC concluded, in the EIS, that
25 would be negligible, and insignificant. Those are the

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1 adjectives in the EIS.

2 CHAIR SPRITZER: That is for unit 3?

3 MR. LEWIS: For unit 3, yes.

4 CHAIR SPRITZER: And I assume -- well, we
5 are not here about unit 4, but that would be clearer
6 for unit 4, where you were going to --

7 JUDGE COLE: There is no water discharge
8 for --

9 CHAIR SPRITZER: For unit 4, right.

10 MR. LEWIS: Currently, in the COLA, there
11 is no proposal for unit 4, so --

12 JUDGE MIGNEREY: Right.

13 CHAIR SPRITZER: Right.

14 MR. LEWIS: -- we are only talking about
15 unit 3.

16 CHAIR SPRITZER: Right.

17 MR. LEWIS: Our COL application has not
18 changed the proposed cooling system that was
19 established in the ESP proceeding.

20 It has not changed the condenser heat
21 exchanger duty. That parameter was specified in the
22 ESP and the plant parameter envelope. And our COL
23 shows, in table 3.0-2, what the original plant
24 parameters were, that were positive, and what the
25 current value is.

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1 And what it shows is that parameter, which
2 is basically the heat that has to be rejected from the
3 unit, has not changed. We are still within the
4 bounds.

5 I have heard BREDL say, a number of times,
6 we are outside the envelope. One of the major
7 objections to BREDL's contention is that Mr. Gundersen
8 never addressed the envelope.

9 He simply said, well now you have a PWR,
10 and it used to be a BWR. To make it an admissible
11 contention, to raise an issue that was looked at
12 extensively, resolved, and even litigated, in the ESP
13 proceeding, BREDL should have done more than say, you
14 know, this is a different reactor.

15 They should have looked at the parameters
16 that were assumed and said, this is exceeded, or
17 addressed one of the other exemptions that allow you
18 to address a resolved issue in an ESP proceeding.

19 In the ESP proceeding consumptive water
20 use was looked at carefully and resolved. There was
21 no open issue with consumptive water use. The heat
22 impact on the lake was looked at, and resolved.

23 And there was no open issue. The issue of
24 alternatives was looked at, and resolved. A number of
25 alternatives were looked at, for unit 3, including dry

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1 cooling.

2 You had asked the question about whether
3 dry cooling included an air cooled condenser. The
4 environmental report and the EIS was not that
5 specific, it just addressed dry cooling as a method.

6 CHAIR SPRITZER: Which would include an
7 air condenser, among other alternatives?

8 MR. LEWIS: It would. I suspect that if
9 you actually looked at the description of the fans,
10 and the size, it would have contemplated a normal dry
11 cooling system, which has an intermediate water cooled
12 loop, as opposed to the steam coming straight from the
13 turbines, and running out into the yard, and then
14 going to the condenser.

15 But the condenser, out in the yard, would
16 be about the same size. The main difference is that
17 you would now have this steam, from your turbine,
18 running out into the yard to your condensers, and your
19 fins, and then running, condensed, back into the
20 plant.

21 But the concept of dry cooling, which was
22 looked at as an alternative is, fundamentally, the
23 same. The one that eliminates use of evaporative loss
24 as a method of cooling and condensing the steam.

25 CHAIR SPRITZER: The one thing that

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1 seemed, to me, not to have been covered at the ESP
2 stage, was this issue about copper and, what was the
3 other pollutant?

4 JUDGE COLE: TBT.

5 JUDGE MIGNEREY: TBT.

6 CHAIR SPRITZER: TBT.

7 MR. LEWIS: Actually copper was, and maybe
8 I should clarify that. The plant parameter envelope
9 actually did specify blow-down constituents, including
10 copper.

11 And it specified a one part per million
12 copper content. And that parameter, also, is not
13 being exceeded. If you look at table 3.0.2, you will
14 see blow-down constituents, you will see copper.

15 The plant parameter envelope assumption
16 was 1 ppm, the current assumption is still less than
17 one ppm.

18 CHAIR SPRITZER: Okay.

19 MR. LEWIS: So we are, actually, still
20 bounded there.

21 The main issue that was unresolved, with
22 respect to water quality, and I would agree with you
23 that water quality was not completely resolved in the
24 ESP proceeding, was actually not the cooling tower
25 blow-down.

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1 There were other plant effluents, from
2 other systems, that would go through a clean-up
3 system. That system had not yet been defined.

4 And if you actually look at appendix J, to
5 the EIS, this is NUREG 1811, the ESP EIS, appendix J
6 indicates, you know, what were the issues that were
7 not resolved.

8 What that issue actually says is what
9 needs to be defined, in the COL proceeding, are the
10 constituents from effluent other than blow-down. It
11 was all the other stuff, from the plant, that was
12 actually the unresolved issue.

13 The plant parameter envelope, though, did
14 not list as many chemicals as we put in REV 0 of the
15 COL application. I think there were five or six, they
16 were total suspended solids, and copper.

17 But we didn't get down to all the
18 different priority pollutants. At the beginning of
19 this COL proceeding we had additional data, we had
20 taken measurements at the intake. And, therefore, we
21 disclosed that in our COL Application.

22 This is in November 2007. We looked at
23 the two that might exceed the water quality standards.
24 The only two were copper which, as I said, was
25 bounded, and TBT.

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1 Just as a point of interest, in January
2 2011, Virginia increased the water quality standard
3 for TBT, and I could find you a citation. But, as a
4 result, that standard has increased.

5 And what we had presented in our
6 environmental report, in table 3.6-1, was the analysis
7 of these two constituents that could, conceivably,
8 exceed water quality standards.

9 We pointed out that with respect to TBT,
10 the standard was 0.000063 milligrams per liter. That
11 current standard is now 0.000072 milligrams per
12 litter, under the January 2011 revisions to the
13 Virginia water quality standards.

14 So even with respect to TBT we would not
15 exceed it. And, by the way, that result was based on
16 the highest reading of TBT we got anywhere in the
17 lake.

18 And, therefore, we projected, if that was
19 concentrated and discharged, what would be the highest
20 possible concentration at the end of the discharge
21 canal, at the very beginning of the waste treatment.
22 So that parameter was measured there, and not even at
23 MPDF discharge point.

24 CHAIR SPRITZER: Is TBT something that is
25 in the influent that you take in from the lake, and

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1 then discharge back?

2 MR. LEWIS: Yes, TBT is not used, at all,
3 in the plant, as explained in the application. TBT is
4 an additive to marine paint that prevents fouling.

5 So, presumably, the TBT in the lake is the
6 fact that there are lots of boats on the lake that
7 have marine paints that contain TBT.

8 What our application also shows is that
9 the concentration in the lake will not be affected at
10 all. Yes, we take TBT in with the intake, it goes
11 into the cooling tower. It is, then, discharged
12 again.

13 Ultimately the concentration in the lake
14 will not change. It is the same volume in the lake,
15 and the same amount of constituents in the overall
16 concentration can't change in the end.

17 And, no, it is not anything that is caused
18 from the operation of unit 3. The main point on this,
19 though, is that this information, this additional
20 information was provided in the COL ER in November
21 2007.

22 It was new information. If they wanted to
23 challenge it, it would have been timely, at that
24 point. It is not timely now. And none of this has
25 anything to do with the change in reactor technology.

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1 JUDGE MIGNEREY: In that same table, that
2 you just referenced, 3.6-1, with the TBT, is also the
3 copper?

4 MR. LEWIS: Yes.

5 JUDGE MIGNEREY: Could you comment on
6 that? You seem to exceed the copper.

7 MR. LEWIS: Those are the two, again,
8 constituents that could, at the end of the discharge
9 canal, exceed the water quality standard, based on the
10 maximum reading.

11 We took, basically, I think it was a year
12 of readings, at the intake. And we had one higher
13 reading of TBT, which we used to estimate that maximum
14 value, and we had some high readings of copper.

15 And we took the highest one, evaluated the
16 concentration, essentially a factor of four in the
17 blow-down, consider that the dilution in the discharge
18 canal, before it enters the waste treatment facility
19 and figured, okay, what could be the possible
20 concentration there.

21 That is, actually, not the point where the
22 quality water standard would apply. But we applied it
23 there, anyway, just to make sure that we had addressed
24 what would be the potential impact, including on the
25 waste heat treatment facility.

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1 And, yes, there is a -- these two values,
2 that are 124, 126 priority pollutants, these two are
3 identified just because these are two of the only ones
4 that, yes, there is a possibility of the water quality
5 standard being exceeded, based on maximum values at
6 the very end of the discharge canal.

7 And we also presented the average values
8 in the waste heat treatment facility, and they are
9 going to be well below the water quality standards.

10 JUDGE MIGNEREY: I noticed that there was
11 one change between this and the original COL. And
12 that was the original had higher values, because you
13 had nine cycles, and this one has lower values because
14 you are only assuming four cycles.

15 Can you explain the difference, why that
16 was changed?

17 (Pause.)

18 MR. LEWIS: My understanding is that
19 simply four is what we expect to do. In the prior
20 analysis we had done nine as an overly conservative
21 estimate.

22 That would be maximizing the concentration
23 more than it would, in fact, be the case.

24 JUDGE MIGNEREY: All right.

25 CHAIR SPRITZER: As you know, Mr. Lewis,

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1 in our original ruling on the petition for a hearing,
2 we had to deal with this issue of what is required in
3 order for an issue to be resolved at the ESP stage.

4 I don't think that any other Board had to
5 address that. We didn't really have any definitive
6 guidance from the Commission so we, essentially, came
7 up with our own test, when you are dealing with a
8 situation where, well let's assume for the minute,
9 that the issue has not been litigated.

10 I understand your position that this issue
11 actually was litigated. But in terms of the Staff's
12 analysis, and the FEIS, where they did look at the
13 comparison of alternatives, it seems pretty clear to
14 me they did consider the issue.

15 BREDL could have, if they wanted to
16 challenge that analysis, at least as long as it was
17 within the scope of the proceeding, whether it was
18 something that was necessary for the Staff to look at.

19 That is sort of an interesting issue,
20 under NEPA, when you are issuing and ESP, do you have
21 to go into, or to what extent do you have to go into -
22 - does the Staff have to go into the actual
23 construction and operation of a nuclear power plant,
24 given that the ESP itself doesn't authorize that.

25 Do you have any -- and I would ask the

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1 same question of the Staff. But I wonder, do you have
2 any -- you probably covered that in your environmental
3 report, even though, maybe, you didn't have to.

4 Your environmental report at the ESP stage
5 --

6 MR. LEWIS: Well, in fact, the regulations
7 specifically require both the environmental report and
8 the EIS at the ESP proceeding, to be a complete ER and
9 EIS that looked at the impacts of construction and
10 operation.

11 CHAIR SPRITZER: Did the regulations, we
12 are talking about the regulations that were in effect
13 at that time?

14 MR. LEWIS: Yes.

15 CHAIR SPRITZER: Which I guess is 2006.
16 Did the regulations use that term, construction and
17 operations? I haven't found that, but I may have
18 looked at the wrong regulation.

19 MR. LEWIS: Yes, they did. My
20 recollection, and I can't pull out the 2006 version of
21 the regulation --

22 CHAIR SPRITZER: No, I know.

23 MR. LEWIS: But my recollection is that
24 the regulations required an environmental report, a
25 complete environmental report that looked at

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1 construction and operation.

2 The deeper rationale was, I believe, to
3 avoid segmentation. And the ESP is a partial COL --

4 CHAIR SPRITZER: Right.

5 MR. LEWIS: -- you know, in performing a
6 first step. I think the NRC thought, appropriately,
7 that the environmental review should be one that
8 looked at the entire project, including construction
9 and operation, and not just the preliminary
10 construction.

11 Which, at that time, was still considered
12 construction too, the regulations have changed a
13 little bit. In addition, though, the major focus of
14 the early site permit proceeding is looking at the
15 suitability of the site.

16 And it is the suitability of the site for
17 construction and operation. And, to do that, you
18 really do need a complete EIS.

19 CHAIR SPRITZER: Okay.

20 MR. LEWIS: The rules, at that time, as
21 they do today, provided only a few exceptions to what
22 had to be in the complete ER and the EIS.

23 The exceptions were a need for power, and
24 alternative energy sources, not alternative cooling
25 systems, alternative energy sources like, you know,

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1 should you be building a coal plant, or should you be
2 using wind.

3 CHAIR SPRITZER: Right.

4 MR. LEWIS: But there were no -- and the
5 fact that the regulations said you don't have to look
6 at those alternatives actually implies that the
7 remaining alternatives, you certainly do have to look
8 at.

9 CHAIR SPRITZER: Right.

10 MR. LEWIS: And they were.

11 CHAIR SPRITZER: Okay, thank you. I think
12 that about covers your time. I will give you another
13 minute if you have anything else you want to add.

14 MR. LEWIS: Let me look at my notes very
15 quickly. I think we have addressed it, in our
16 pleading, very well. But I do want to briefly point
17 the assertion that our current proposed USAPWR has a
18 higher heat load than the previous ESBWR.

19 We have explained why, in our pleadings,
20 it is just not the case. And to assume that what Mr.
21 Gundersen did is looked at the maximum achievable
22 electrical output in the DCD, which was 7,800
23 megawatts electric, and just assume that that must
24 also mean there is a higher heat load.

25 I would submit that is not a sufficient

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1 basis, because it is not the electrical outlet, output
2 of the plant that determines the heat load. It is the
3 thermal output.

4 And our thermal output, for this plant, is
5 actually lower than the ESBWR, the thermal rating, and
6 it is lower than the PPE. And, in fact, if you can
7 get more megawatts out of a plant with a lower thermal
8 rating, all that means is they are putting less heat
9 out to the atmosphere, or the water, or wherever it
10 goes.

11 CHAIR SPRITZER: Very good, thank you. We
12 will move on and hear from the Staff.

13 MR. WEISMAN: Thank you Your Honor.
14 Robert Weisman for the Staff.

15 I plan to address two of the Board's
16 questions that appear to be directed to the Staff, and
17 then make a short argument.

18 So with respect to Board question 4, I
19 think it is quite clear that both copper and
20 Tributyltin were not the issues of those constituents
21 being, in discharging from the plant, were not -- that
22 was not resolved in the ESP proceeding.

23 The Tributyltin was, TBT, was discussed in
24 the Applicant's revision zero of the ER, back in
25 November of 2007. The Staff addressed both

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1 Tributyltin and copper, in NUREG 1917, which was a
2 supplemental EIS on the COL application.

3 As Mr. Lewis alluded to, both of those
4 constituents in -- became an issue because they exist
5 in the lake, and they would be reconcentrated by
6 evaporation from a wet/dry cooling tower.

7 So those were fully evaluated in NUREG
8 1917. To the extent that the Intervenors wish to
9 raise a contention, they should have done that early,
10 earlier in this proceeding.

11 And if they wish to have -- the NUREG 1917
12 in Chapter 9, stated that there was nothing new and
13 significant with respect to the design alternatives
14 considered in the ESP, that would include the dry
15 cooling.

16 And that Staff determination included
17 consideration of these chemical constituents, and
18 effluents from the plant. So we were on the record,
19 we disclosed our evaluation. And to the extent that
20 the Intervenors wanted to challenge it, they should
21 have done it then.

22 JUDGE COLE: What was the date of NUREG
23 1917?

24 MR. WEISMAN: The final, the final version
25 was issued in February of 2010.

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1 JUDGE COLE: Okay.

2 MR. WEISMAN: I'm sorry I can't tell you
3 what date the draft was issued, but I believe it was
4 some time in 2009.

5 JUDGE COLE: Thank you.

6 MR. WEISMAN: With respect to -- I'm
7 sorry.

8 CHAIR SPRITZER: Back up a minute. On
9 that -- I think the argument that you made in your
10 brief was that they should have challenged that -- if
11 they had something to say about they wanted to revisit
12 the issue decided in the ESP, about alternatives,
13 based on these pollutants, copper and TBT, the time to
14 do it would be in response to the application?

15 MR. WEISMAN: The COL application, yes,
16 Your Honor.

17 CHAIR SPRITZER: And you don't really need
18 to get into the question of whether you dealt with
19 this in the EIS for the COL?

20 MR. WEISMAN: That is correct, Your Honor.

21 CHAIR SPRITZER: Your position is they
22 should have done it right away when the original
23 application was filed for the ESBWR?

24 MR. WEISMAN: Yes. But we don't claim
25 that the ESP proceeding resolved that issue.

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1 CHAIR SPRITZER: Right, I understand. So
2 they would have, at least without running into the bar
3 of whatever the regulation is that deals with issues
4 resolved at the ESP stage, they wouldn't have had any
5 problem with that if they had raised it up front, in
6 response to the original application?

7 MR. WEISMAN: Yes.

8 CHAIR SPRITZER: Essentially that is Mr.
9 Lewis' argument also.

10 MR. WEISMAN: That is correct.

11 CHAIR SPRITZER: Okay. But they didn't do
12 that.

13 All right, but we did have the question,
14 also, this may be next on your list, of was it
15 necessary to get into the alternative system, the
16 cooling system design issue at the ESP stage?

17 Was that something that the Staff needed
18 to do in order to comply with NEPA, at the ESP stage,
19 under the regulations that were in effect at that
20 time?

21 MR. WEISMAN: Yes, Your Honor. The -- I
22 don't have a copy of the old regulations, and
23 unfortunately the statement of consideration for the
24 New Part 52 doesn't summarize those regulations.

25 But the Staff's position is, to the extent

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1 an Applicant, for an ESP, includes in its ER a
2 discussion of any particular effect, environmental
3 effect, then that is within the scope of the ESP
4 proceeding.

5 And it is necessary for the Staff to
6 evaluate, evaluate that, that impact. Now, it is
7 theoretically possible that an Applicant might not
8 provide enough information for the Staff to complete
9 its evaluation, such as what happened with respect to
10 copper and TBT.

11 And then that, the Staff would explicitly
12 exclude that from its findings. But the purpose of an
13 ESP is to resolve issues up front, that early
14 resolution of issues, that can be resolved early.

15 And to the extent that a plant parameter
16 envelope, or even an evaluation of any particular
17 design, will involve environmental impacts, those
18 issues can be resolved early in considering whether a
19 site is an appropriate site for the location of
20 nuclear power facility.

21 So the Staff would argue that, yes,
22 anything that is within the scope of the Applicant's
23 environmental report, needs to be resolved at the ESP
24 stage.

25 And I think that the current regulations

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1 reflect that, reflect that view.

2 CHAIR SPRITZER: Okay, thank you.

3 MR. WEISMAN: So I will go on to Board
4 question 5.

5 CHAIR SPRITZER: Okay.

6 MR. WEISMAN: The Board asked if the
7 impacts of the cooling system were evaluated in the
8 ESP. And there was extensive discussion of Dominion's
9 proposed wet/dry cooling systems in NUREG 1811.

10 I can, I can run through the different
11 places where it appears in the document. Section --
12 chapter 2 of NUREG 1811, that is the EIS on the ESP,
13 gives the background of the existing environment, the
14 existing condition of the lake.

15 And the plant parameter envelope is
16 discussed on page 3-2, that is chapter 3 of the, of
17 NUREG 1811. The impacts from operation are thoroughly
18 evaluated in chapter 5 of the ESP EIS.

19 Cumulative impacts in chapter 7, and there
20 is a section on water impacts. And the system design
21 alternatives, as we have stated in our brief, are in
22 chapter 8 pages 8-2 to 8-5.

23 So, yes, the proposed system in the COL
24 was thoroughly evaluated in the ESP EIS.

25 CHAIR SPRITZER: Okay.

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1 MR. WEISMAN: So I only have a couple of
2 more points to make. One is something that Mr. Lewis
3 addressed, that Intervenor has claimed that the heat
4 load from the pressurized water reactor, currently
5 proposed in the application, would be greater than
6 that analyzed in the ESP EIS.

7 But the application says otherwise. The
8 ESP application bounds the heat load that is proposed
9 in the COL application. And not to put too fine
10 point on it, but the Staff analyzes an application
11 based on what it proposes, and not based on what its
12 capabilities are.

13 If the Commission ultimately issues a
14 license for Dominion's proposed facility, it would
15 include, it would authorize operation of that
16 facility, at a particular thermal heat load.

17 And the Commission, the Staff, and the
18 Commission would not put a higher thermal heat load
19 than that proposed by the Applicant in any license it
20 might issue.

21 CHAIR SPRITZER: I guess the Applicant
22 could come in though, later, and request a
23 modification of its license. That is an interesting
24 question not really presented here.

25 But what would happen, as far as

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1 revisiting findings made at the ESP stage, if ten
2 years from now they want to increase the --

3 MR. WEISMAN: Well, that would be an
4 amendment to the license. And it would be a -- we can
5 argue about whether it is a major federal action or
6 not.

7 But it would require that amendment, it
8 would be a separate action, requiring separate
9 environmental review.

10 CHAIR SPRITZER: Okay, great.

11 MR. WEISMAN: And I guess the last point
12 I would like to make is, the Intervenors do not
13 identify any different kind of environmental effect
14 from the system that they assert should be considered
15 in this contention, as opposed to the environmental
16 effects of the dry cooling system that is evaluated in
17 the ESP EIS.

18 To the extent that the system that they
19 wish for the Board to consider, here, is different
20 from that system, well the plant parameter envelope
21 included pressurized water reactors, at the ESP stage.

22 And if there was a difference, that
23 difference ought to have been raised in the ESP
24 proceeding, and considered then. It is resolved under
25 10CFR Section 52.39. And that is the Staff's

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1 position.

2 CHAIR SPRITZER: Very good. Thank you,
3 Mr. Weisman. We said we would give the Intervenors
4 three minutes for rebuttal.

5 MR. LEWIS: Judge Spritzer?

6 CHAIR SPRITZER: Yes, sir?

7 MR. LEWIS: I have one clarification on a
8 question from Judge Mignerey. I can do it very
9 quickly, but I would like to --

10 CHAIR SPRITZER: Fine, go ahead.

11 JUDGE MIGNEREY: Yes.

12 MR. LEWIS: It relates to the maximum
13 concentrations of TBT and copper identified in that
14 table in the environmental report.

15 JUDGE MIGNEREY: Right.

16 MR. LEWIS: We did not actually -- we did
17 not increase the maximum projected concentrations, or
18 decrease -- we did not change the maximum projected
19 concentrations of TBT and copper, between REV 2 and
20 the current revision.

21 So we kept the maximum value that had been
22 projected with nine cycles of concentration.

23 JUDGE MIGNEREY: Right, you have changed
24 the averages?

25 MR. LEWIS: That is right. And so the

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1 value that is exceeded did not change.

2 JUDGE MIGNEREY: Right, it is the average.
3 Yes, right.

4 MR. RUNKLE: If I could just have a couple
5 of minutes on rebuttal?

6 I was quite surprised to understand that
7 both Dominion and the public staff spend most of their
8 time arguing about Tributyltin as an unresolved issue.

9 And it is, certainly, Mr. Lewis' testimony
10 about the -- about what the state of Virginia has
11 done. Similarly we understand that the U.S.
12 Environmental Protection Agency has ordered, again,
13 the reduction in the discharges of Tributyltin by
14 2014.

15 So to say that they are going to violate
16 a standard, and Virginia has changed it, do they need
17 to also inform the Board that in 2014 things are going
18 to change again?

19 So the Tributyltin is affected by water
20 withdrawal and evaporation loss, both the water
21 withdrawal and evaporation loss, it gets concentrated,
22 so does copper.

23 So it is an issue, but it is one of the
24 many issues, I think, that a hearing on this
25 contention could resolve. And we pray -- we put those

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1 out in front of you, as issues that could be resolved
2 there.

3 I find it hard to understand the Staff's
4 position that the issues should have been raised, on
5 the initial COLA, on something that was filed in
6 February of 2010, when the new COLA, on the
7 pressurized water reactor, wasn't filed until the end
8 of June 2010.

9 And so there may be issues that could have
10 been raised at the first COLA, as it was introduced.
11 But, certainly, those issues can be raised again.

12 And if they -- if there is another COLA
13 with another design, those issues can be kept on being
14 raised again.

15 CHAIR SPRITZER: Well, let's assume that
16 they are correct, that the numbers were, essentially,
17 the same back in, was it, 2007, when the first COLA
18 was filed, numbers for copper and TBT.

19 They file a new, or a revised application
20 for a different reactor. But in terms of copper and
21 TBT the discharges are equivalent. Let's assume that
22 is correct.

23 MR. RUNKLE: Okay.

24 CHAIR SPRITZER: Why should we now allow
25 you to revisit that issue, if the numbers haven't

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1 changed? Given that our rules are pretty strict in
2 terms of requiring that contentions be raised as early
3 as possible?

4 MR. RUNKLE: See, that is the position
5 that I think is untenable. Because what you are
6 suggesting is that all issues should have been raised
7 on the initial COLA, for something that is no longer
8 even being considered.

9 And that we have a COLA, in front of us,
10 on a pressurized water reactor, that has certain
11 design DCDs, documents, design control documents, and
12 a completely, you know, design with different impacts.

13 I think that as of June 29th, the Board's
14 Order to allow new contentions, I think any -- at that
15 point, anything that could have been raised, at that
16 point, anyone of the initial 11 or so contentions, or
17 10 contentions that were raised, could have been
18 raised again.

19 CHAIR SPRITZER: Well, our Order did say,
20 however, that we were limiting it to contentions based
21 on new information.

22 Let me say, since you are fairly new to
23 the case, we are dealing with issues, this is, I
24 believe, the first combined license application that
25 was actually filed, of the slew of about 18 that were

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1 filed, starting in 2008.

2 So in this case we are dealing with some
3 issues dealing with the COL regulations, that haven't
4 been explored before.

5 As I said, earlier, we ruled that the fact
6 that they changed the reactor didn't open up the field
7 to any and all new contentions, but only contentions
8 based on new information.

9 MR. RUNKLE: Well --

10 CHAIR SPRITZER: You are welcome to carry
11 that issue to the Commission, they may disagree with
12 us. But, for our purposes, we are proceeding on the
13 assumption that only contentions based on new
14 information can be filed, that we didn't reopen the
15 whole theater, so to speak, to whatever contentions
16 someone might want to bring up.

17 I understand you may have a plausible
18 legal argument that that was a mistake on our part,
19 but you --

20 MR. RUNKLE: But, to us --

21 CHAIR SPRITZER: -- do have an avenue,
22 before the Commission.

23 MR. RUNKLE: To us the new information was
24 a completely new design, and a completely new reactor,
25 with completely new impacts, that wasn't in the

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1 initial COLA.

2 And the purpose of this hearing, today, is
3 to whether to admit contentions to go to hearing.
4 There has been a lot of discussion about the substance
5 of Mr. Gundersen's, there was a critique of his
6 analysis.

7 Well, let's take that to hearing, and put
8 Mr. Gundersen on the stand and, you know, we can
9 criticize it legally, but until we get into the
10 evidentiary hearings, right now the only thing on this
11 contention, that is before us, is an expert
12 declaration by Mr. Gundersen.

13 CHAIR SPRITZER: Okay.

14 MR. RUNKLE: There is no expert criticism
15 of his analysis. There are legal issues that we are
16 going to have to resolve. But I think that looking at
17 the evidence, we have to stand by what he says.

18 CHAIR SPRITZER: Let me ask the specific
19 legal question that I, previously, asked of Dominion
20 and the Staff.

21 And that is, do you agree that the Staff,
22 at the ESP stage, needed to get into the question of
23 what are the impacts of constructing and operating a
24 nuclear reactor unit 3, at the North Anna site, and to
25 explore alternative ways of operating that reactor?

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1 Could they have just ignored that issue at
2 the ESP stage, without violating NEPA?

3 MR. RUNKLE: If I understand your
4 question, I thought that was the purpose of going
5 through the ESP, is to looking at the site conditions,
6 and looking at, in general terms, the envelope of the
7 potential reactors that went in there.

8 The specifics of ways to reduce thermal
9 pollution, and other kinds of pollution of the lake,
10 and water usage, that kind of thing, I think that is
11 perfectly reasonable to bring up under a COLA.

12 Because it is, it is not just a specific
13 site, it is a specific design, now, in front of you.
14 And does that, what are the impacts of that to design
15 on that site, and those specific environmental
16 considerations.

17 CHAIR SPRITZER: Okay. Anything further?

18 MR. RUNKLE: Not on this.

19 CHAIR SPRITZER: Okay.

20 JUDGE MIGNEREY: Can we take a five minute
21 break?

22 CHAIR SPRITZER: Yes, we will take a five

23 --

24 JUDGE MIGNEREY: Ten minute break.

25 CHAIR SPRITZER: Ten minute break.

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1 JUDGE MIGNEREY: Nobody can take a five
2 minute break, that is an impossibility.

3 CHAIR SPRITZER: So we will come back at
4 10 of, reconvene at 10 of.

5 (Whereupon, the above-entitled matter went
6 off the record at 10:38 a.m. and went back on the
7 record at 10:50 a.m.)

8 CHAIR SPRITZER: We are back on the
9 record. We will now proceed to hear argument on
10 contention 13, originally described as contention 2.
11 And we will start with the Intervenors, again, with 30
12 minutes.

13 Do you want to reserve any time for
14 rebuttal?

15 MR. RUNKLE: Give me five minutes, if I
16 could?

17 CHAIR SPRITZER: Okay, very good. Please
18 proceed.

19 MR. RUNKLE: Similar to contention 12, a
20 lot of the arguments, from the Staff and Dominion, is
21 going back, again, to the ESP. It is, really, the
22 touchstone to try and get as many issues, covered by
23 the ESP, and not to be considered, again in the first
24 COLA, or the second COLA.

25 CHAIR SPRITZER: Let me interrupt for a

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1 second. I didn't indicate, earlier, I would try to
2 give an explanation, for our audience, as to what we
3 are talking about.

4 We have now moved to a new contention.
5 This one doesn't concern water quality, rather, it
6 concerns geology, and seismic impacts, seismic issues
7 and, particularly, a request for an exemption that
8 Dominion has included in its revised application for
9 a combined license.

10 And that is what we are going to hear
11 argument on, here. Again, we have issues both
12 relating to the time limits, and the substance of the
13 contention.

14 Sorry, please proceed.

15 MR. RUNKLE: Yes. I mean, it has really
16 been the touchstone of trying to set a time frame for
17 when contentions should be raised, we are too early,
18 we are too late.

19 We are, very seldom, on time raising
20 contention.

21 CHAIR SPRITZER: But one thing I think is
22 clear, here, you are challenging a request for an
23 exemption. At least, I think, you are challenging a
24 request for an exemption that was submitted, for the
25 first time, at least as I understand it, in the

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1 revised application submitted in June.

2 That was the one we allowed you to file
3 new contentions on, based on new information. To my
4 knowledge there was no, there could not really have
5 been, logically, a request for an exemption, submitted
6 with respect to the DCD, the design control document,
7 for the APWR, until they actually decided they were
8 going to use the APWR.

9 So that seems to be a new issue.
10 Certainly one that wasn't, itself, dealt with at the
11 ESP stage. If that is the issue you are trying to
12 raise.

13 I guess part of the problem I had, at
14 least, in understanding your contention, is what
15 precisely is it you don't like.

16 MR. RUNKLE: Well, we don't think there is
17 any basis for asking for an exemption of the rules
18 governing the ability of the plant to safely shut down
19 in case of seismic activities.

20 This goes back to 1967, and we need to go
21 back that far when the initial analysis was done, of
22 the seismic conditions of the site. This was revised,
23 again, in the early '70s.

24 We looked at it through the ESP. It was
25 addressed, in the ESP. It, obviously, was not

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1 resolved in the ESP. Looking at Chairman Karlin's
2 dissents, in a fairly long decision, he says there was
3 a failure to rigorously investigate alternative sites.

4 And he was, particularly, concerned about
5 the seismic activities at the site. Now, in the
6 resolution of the ESP, it was agreed that, okay, there
7 was, it was adequate, the environmental conditions,
8 on-site, looking at the seismic activities was
9 adequate to protect public health and safety.

10 Now, what happens is the first COLA
11 requests an exemption on the boiling water reactor,
12 requests an exemption from the standards for seismic
13 activities because for a boiling water reactor the --
14 because of the seismic conditions on-site, that plant
15 can't be safely shut down.

16 Okay --

17 JUDGE COLE: That was an issue in the ESP?

18 MR. RUNKLE: Yes. And it was -- but then
19 the exemption was that the boiling water reactor
20 couldn't shut down appropriately in case of seismic
21 conditions and seismic activities.

22 We have a second COLA, the pressurized
23 water reactor, where again Dominion has come and said
24 they cannot meet seismic standards for the safe
25 shutdown of that plant.

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1 And they are seeking special -- they are
2 trying to argue special circumstances that would, I
3 think, that the special circumstances that they have
4 an undue risk on public health and safety, because of
5 the seismic activities on there.

6 So looking at -- if we were just looking
7 at the ESP, okay, it was litigated, it was argued.
8 There was a significant dissent between the Board
9 members. It wasn't, you know, unanimously resolved.

10 We have, the next time that Dominion
11 applies for a COLA, they are saying, we can't meet
12 those. You know, whether the ESP was correct or not,
13 Dominion is saying, because of the seismic activities
14 on the site, our boiling water reactor can't meet
15 those standards, and we need to have some kind of
16 special exemption.

17 The circumstances of the special
18 environmental, we can't meet it with that. So then
19 they come in, again, with the pressurized water
20 reactor. And what happens? We cannot meet the
21 seismic standards.

22 So something is flawed in this. Either
23 the ESP was flawed, that the seismic conditions on
24 that site are significant, and that any construction
25 of a plant, any one of those eight or ten plants that

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1 are within the envelope, can meet that standard or
2 they can't.

3 We know that two of them can't. We know
4 the boiling water reactor can't. We know the
5 pressurized water reactor. So there was a significant
6 flaw in the ESP that has carried itself to where we
7 are today.

8 And the contention is clear. That plant
9 cannot meet the safety standards because of seismic
10 activities. And they are asking for an exemption
11 based on a resolved issue, that wasn't resolved at the
12 ESP, an issue that was brought on the first COLA
13 request, that they are asking for an exemption for.

14 So, I mean, we can get into a lot of the
15 discussion of, you know, looking at the seismic
16 activities on the site. The contention is clear.
17 That because of all the studies that are before us, on
18 the seismic activities, whether it was resolved at the
19 ESP level or not, that decision is, obviously, wrong.

20 And so what we have, in front of us, is a
21 pressurized water reactor that doesn't meet those
22 standards. And those are not, those are significant
23 health and safety standards.

24 This is not one of the, you know, if you
25 are writing contentions you just throw this in. This

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1 has been an unresolved issue for, at least, 44 years.

2 And we are still going back, I think it
3 goes back to the original studies that Dominion did,
4 and trying to get this information, and trying to just
5 keep on trying to say this is not a problem.

6 But when push comes to shove, and when
7 they would have to actually do a COLA, and they look
8 at those specific designs, for their boiling water
9 reactor, and their pressurized water reactor, you
10 can't put those reactors on that site, because of the
11 seismic activities there.

12 And that has been proved, I think, for
13 quite a long time.

14 CHAIR SPRITZER: Well, let me start and
15 try to go through this in kind of a logical sequence.

16 Do you agree that the regulations, the
17 NRC's regulations, allow them to request the exemption
18 they have requested? Is it a permissible request that
19 they have made?

20 I understand your position that they
21 shouldn't get the exemption, but do the regulations
22 allow for the exemption they are seeking?

23 MR. RUNKLE: Well, yes. If they can prove
24 special circumstances that don't have an undue risk on
25 public health and safety they can do that.

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1 CHAIR SPRITZER: Now, can you point to me,
2 anything in what you have submitted, in support of
3 what we are now calling contention 13, as to why you
4 think they can't meet that standard?

5 They can't show that there is not an undue
6 risk, or your view that there is an undue risk?

7 MR. RUNKLE: Well, first of all, I don't
8 see any special circumstances. The only thing in
9 special circumstances, that we can see, is that there
10 is an undue risk of seismic activities in that site.

11 And that none of the plants that they have
12 put COLAs in can meet the standards on that specific
13 site. And so the special circumstances is, somehow or
14 another, that the information they had was either
15 intentional, misleading, or it was incompetent.

16 Or that they brought things to this Board,
17 in the ESP proceedings, that just weren't correct.
18 Because we know that after what they brought to you,
19 boiling water reactors can't fit on that site,
20 pressurized water reactors can't fit on that site.

21 They need -- so somewhere there is a flaw
22 in, I think directly admitted by Dominion, in their
23 filings on the exemption, we can't meet the standards,
24 it is going to increase the risk to public health and
25 safety, but we are asking for an exemption anyway.

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1 Even though we know, or should have known
2 for 40 years, that that site had seismic activities
3 that was unsuitable.

4 Going back to Chairman Karlin's, it is
5 looking at the alternative sites that was, probably,
6 the biggest deficiency in the ESP proceedings, to try
7 to find a site that didn't have that kind of seismic
8 activities.

9 And I think that issue is before us today.
10 Looking at -- and I'm in the -- their quote is,
11 according to Dominion, both horizontal and vertical
12 movements would exceed the regulatory requirements of
13 the safe shutdown earthquake if the Mitsubishi heavy
14 industries USAPWR were built on the shores of Lake
15 Anna.

16 And this is, this is a serious matter.
17 And so when we are bringing this contention to you is
18 because here we have a pressurized water reactor, the
19 second design, that has failed to meet the seismic
20 activities for safe shutdown.

21 And the degree of the risk is, certainly,
22 something that can be litigated. Whether there are
23 special circumstances that they can demonstrate, which
24 they haven't, there have been no demonstration of
25 special circumstances.

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1 And that we know that, you know, you just
2 -- none of the plants are going to fit there. And so,
3 in my legal practices, this would be something I would
4 bring as a summary judgement.

5 And say, based on the information in front
6 of us, there is just no way that this plant can be
7 brought on here.

8 CHAIR SPRITZER: With or without an
9 exemption? I mean, if they get the exemption they can
10 build the plant, right?

11 MR. RUNKLE: Well, but the exemption is
12 based on, you know, --

13 CHAIR SPRITZER: Special circumstances.

14 MR. RUNKLE: -- special circumstances.
15 And there are design modifications that they could
16 make, that would make it, that you could site a
17 reactor there.

18 I mean, I think that is, also, clear as
19 part of the COLA application. There are -- okay.

20 Just to read this in the record. When such
21 circumstances exist "design modifications are to be
22 made as necessary to accommodate the site-specific
23 conditions."

24 And our contention 13 cites the COLA part
25 2 FSAR 3-52, under revision 3. An exemption is a

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1 substantial difference, I think, than the
2 modifications.

3 If they are trying to get out from the
4 regulations that they knew, or should have known, that
5 this plant could not be sited there, that is a lot
6 different than coming to the Board and saying, we are
7 bringing together modifications of the design
8 documents.

9 And that we want to make these
10 modifications to be able to meet the seismic standards
11 on that site.

12 So an exemption is, we don't have to meet
13 those, we know we can't meet them, we don't want to
14 meet them. Special circumstances is those design
15 modifications may cost more money.

16 But that is not, I mean, I think that is
17 not, that is not the burden of an Intervenor to say
18 how much money that is going to be.

19 Let's take that to hearing. What are
20 those design modifications that could make it
21 suitable? When did they know that what they told you
22 in the ESP was incorrect; when did they know that that
23 site was unsuitable for boiling water reactors, and
24 pressurized water reactors?

25 And going back to, you know, the

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1 contention. This is all new information. Pressurized
2 water reactor, we have a COLA for the pressurized
3 water reactor. It is new as of June 29th, 2010.

4 At the same time they are admitting that
5 they cannot meet the seismic activities. Certainly in
6 the, looking at CFR part 5239-C, I guess V, this is
7 new information.

8 And this is one of the things that why the
9 ESP is not final, when there is new information. And
10 I think the new information is, you know, on this the
11 new COLA, the new information is they can't comply
12 with the seismic activities.

13 They knew that all along, that is new
14 information. And certainly what was purported to be
15 resolved in the ESP on this, obviously, was not
16 resolved if the -- if Dominion can come, before us
17 again, you know, every couple of years and say, by the
18 way, we cannot meet those seismic conditions on that
19 site.

20 CHAIR SPRITZER: Our first question on
21 contention 13 was, how does contention 13 differ from
22 contention 2 of BREDL's original petition to intervene
23 in the proceeding? That was to intervene in the COL
24 proceeding?

25 So this is post-ESP. That was a

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1 contention that we did not admit. So what is the
2 difference between this contention, the new one, and
3 the previous contention 2 that we didn't admit?

4 MR. RUNKLE: Well, besides the difference
5 between COLA on a boiling water reactor and the
6 present proposal, I think the same contention could be
7 raised every time they came in with a new COLA, and
8 try to get an exemption.

9 Certainly the weight of the second COLA
10 application really goes to the credibility of
11 Dominion. It goes into their -- this is the second
12 time that they have said that they cannot meet those
13 standards.

14 I think that is new information. Even if
15 you, even if you did not accept the contention on a
16 boiling water reactor, it is a new application, we've
17 got, the second time around basically no reactor can
18 be that because of the seismic activities.

19 And I think that is a much different, it
20 is a more severe problem. And in looking at the
21 difference between -- I mean, there is a difference
22 between a boiling water reactor and a pressurized
23 water reactor.

24 And I think any time that there is a
25 contention raised on a new design, a new, you know,

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1 any new reactor on the site, I think all those are
2 fair game.

3 And whether you have rejected it the first
4 time around, I think that just the pure weight of
5 having it come around the second time and say, wait a
6 minute, we know boiling water reactors are unsuitable,
7 now we have a pressurized water reactor, they are not
8 suitable for that site without an exemption that
9 places a significant risk on public health and safety.

10 And that would be the, that is the central
11 part of the contention, and that is what should be
12 litigated. And whether you reject it the first time
13 around, on the boiling water reactor, okay.

14 But now we have another one. So next year
15 they come up with another COLA application and they
16 say, by the way, we need another exemption. I think,
17 even more, we can litigate it at that point.

18 In your order LBP-08-15, which was on the
19 -- with your earlier one you rejected Petition --
20 Contention 2, because looking at the actual site, and
21 prior to the ESP you were looking at the site as
22 opposed to the Applicant's ability to guarantee that
23 that specific design was -- would result in a safe
24 design, and protect public health and safety.

25 And so any earlier decision that the Board

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1 made, in rejecting a contention on the seismic
2 activities, now we have at least two designs that we
3 don't know won't protect public health and safety on
4 that site because of the seismic activities.

5 So even if you got rid of it, just because
6 of site-specific conditions, looking at our -- going
7 back to our envelope of all possible reactors.

8 We know that two out of eight can't fit
9 there without, without a fairly significant exemption
10 from the rules.

11 And so, you know, it is -- we feel, at
12 this point, it is the responsibility of Dominion, with
13 Staff review, to make the necessary findings of
14 safety, and they can't do that.

15 Looking at the --

16 CHAIR SPRITZER: Well, let me ask you to
17 explain that statement. Why can't they do that? I
18 mean, the Staff doesn't seem to agree that they can't
19 do that. They haven't made a decision, yet, but they
20 certainly haven't ruled out the possibility that they
21 could make the findings they would need to make to
22 grant the exemption.

23 Why do you say they can't, or shouldn't?

24 MR. RUNKLE: Well, both can't and
25 shouldn't, I think, comes to the same point. Looking

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1 at what Dominion has requested in the exemption, first
2 of all, it is a very significant exemption of, you
3 know, trying to get out from under seismic rules that
4 have been long established that protect public health
5 and safety.

6 And there are modifications, on the
7 pressurized water reactor, that could, you know, make
8 a substantial difference in that proposed reactor's
9 ability to do that.

10 JUDGE COLE: I expect the Applicant and
11 Staff are going to address that point. But in the ESP
12 Dominion conducted a probabilistic seismic hazard
13 analysis.

14 And they did a site-specific seismic
15 response that they then indicated, on the record, that
16 that satisfied the seismic requirements necessary.

17 Now, is this the same kind of situation
18 here, if they conduct a probabilistic seismic hazard
19 analysis of this specific plant, and they do a site-
20 specific seismic response, seeing how that reacts to
21 the safe shutdown earthquake, is this the same kind of
22 problem we have repeated again, or what?

23 MR. RUNKLE: Well, in the COLA, on the
24 pressurized water reactor, that is before us, they
25 have said that because of seismic conditions there

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1 cannot be a safe shutdown of this plant.

2 And that is a pretty straightforward
3 admission. So rather than to make the modifications
4 to have a safe shutdown, what they have said, instead,
5 is that we want an exemption from those rules.

6 JUDGE COLE: I guess I don't remember
7 reading that in any documents that I read. If you
8 have a reference to that, I would appreciate it.

9 CHAIR SPRITZER: I suspect that if that
10 were Dominion's position, they wouldn't have filed the
11 revised application, and we wouldn't be here talking
12 about.

13 Why don't we, at this point, maybe it
14 would be best, we will give you ample time for
15 rebuttal. Why don't we hear from the Staff? I think
16 we would like to hear from the Staff and the Applicant
17 here, and we will give you -- unless, is there
18 something you wanted to cover?

19 MR. RUNKLE: No. And, you know, those
20 kinds of things I just can't answer you. I mean, give
21 me half an hour I could figure it out.

22 But if you want to supplement additional
23 information, please say so, we would be glad to, you
24 know, answer those and give you the citations. I have
25 it in my notes, and it is an incomplete citation, so

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1 I could answer that.

2 JUDGE COLE: I appreciate your concerns
3 there. But you have made a very strong statement
4 about seismic requirements. And I don't remember ever
5 seeing that in any of the documents that I have read.

6 And I have tried to read all the ones that
7 were before me. Now, I would like to have the
8 Applicant and the Staff address those points, because
9 they are very important points.

10 CHAIR SPRITZER: Are we going to have the
11 same division of time between the Staff and the
12 Applicant as we did? And, Mr. Lewis, will you be
13 going first?

14 MR. LEWIS: Yes, sir.

15 CHAIR SPRITZER: All right, 15 minutes for
16 Mr. Lewis.

17 MR. LEWIS: This contention is a very
18 confusing contention. And I think that that is
19 indicative, in itself, that it is vague, and
20 inadmissible.

21 When you spend this much time just trying
22 to figure out what is the claim, the contention is
23 inadmissible. This contention is, also, not supported
24 by any expert declaration.

25 This is a fairly complex technical

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1 subject. And to try and advance a contention without
2 expert opinion, or something that explains what is
3 going on, again, I think simply shows, on its face,
4 that this contention is not adequately supported.

5 The statement that Mr. Runkle made does
6 not bear any relationship to any statement that I have
7 seen in our application. And the assertion that we
8 are seeking an exemption from long-standing seismic
9 rules, or from the safe shutdown earthquake is just
10 wrong.

11 Just to put this in perspective. In the
12 ESP proceeding what is established in the site-
13 specific safe shutdown earthquake. You do a
14 probabilistic seismic hazard analysis, you establish
15 the safe shutdown earthquake, which is a spectra, and
16 is now referred to as the ground motion response
17 spectra.

18 And that establishes the site
19 characteristic. A characteristic, the NRC's rules in
20 part 52 uses two terms, parameters and
21 characteristics. Characteristics are actual
22 determined values.

23 So in a seismic proceeding, an Early Site
24 Permit proceeding, you determine site characteristics,
25 you determine what is the seismic ground motion of the

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1 site.

2 And that is what is done. The safe
3 shutdown earthquake is a site characteristic. We are
4 not seeking any exemption, in fact we wouldn't. It is
5 not established by a rule, it is established by the
6 ESP, you wouldn't even apply for an exemption from a
7 site characteristic.

8 But, in fact we are using the safe
9 shutdown earthquake, and the ground motion response
10 spectra established in the ESP proceeding. So we are,
11 we established that in accordance with 100.23 and the
12 applicable REG guides, and we are not changing it.

13 In a design certification proceeding the
14 plant designer does not have actual site
15 characteristics, because it doesn't have a real site.
16 So it posits a seismic motion for purposes of design.

17 And that posited motion is a site
18 parameter, it is a hypothetical assumed parameter that
19 they have used in analyzing their plant.

20 And so, therefore, in the USAPWR DCD there
21 is a seismic spectra, which is a parameter that was
22 assumed, and used in the analysis of their standard
23 plant.

24 That spectra is specified in Tier I of the
25 DCD. Tier I requirements, in a site certification

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1 document is the information that the NRC considers
2 established by rule as part of the design
3 certification.

4 And, therefore, if you are not meeting
5 that parameter you need an exemption. When you, when
6 you apply for a COL and you are referencing both an
7 ESP and a design certification, you have to marry up
8 these assumptions.

9 So you take your site characteristic,
10 which is the SSC, which we are not changing, and you
11 compare it against what was assumed in the design
12 certification.

13 If they match, or if the design
14 certification bounds the site characteristic, you are
15 home free. If there are exceedences, of what was
16 assumed in the DCD, then you have to do further
17 analysis.

18 This does not mean that you are relaxing
19 the ground motion of the plant. It just means that
20 you have to do further analysis of the standard design
21 to make sure it is suitable for your actual site
22 characteristic.

23 That is all we are doing. The reason
24 there are exceedences is because the seismic design
25 parameter, this assumed spectra that was adopted in

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1 the DCD, is based on guidance that is, really, for a
2 western state, and has a particular assumption about
3 how the frequencies are distributed.

4 And on most all east coast hard rock sites
5 there will be high frequency seismic exceedences. And
6 the NRC has recognized this in their guidance, and it
7 is recognized in the DCD.

8 If you are on an east coast hard rock
9 site, you are going to have a lot of high frequency
10 because of the -- transmit these high frequencies, and
11 they are going to exceed this standard assumed
12 postulated spectra.

13 Therefore you analyze them, and you show,
14 yes in fact our design is perfectly capable of
15 withstanding, you know, those high frequencies. That
16 is all we've done in this process.

17 We do need an exemption. The only reason
18 we need an exemption is because the assumed, the
19 postulated spectra is in DCD Tier I. But it doesn't
20 mean that we are taking exemption from any of the NRC
21 safety standards. It just means we are taking
22 exemption from a postulated assumption that the
23 standardized plant was done, that was based on, and
24 doing further analysis to show that the plant, in
25 fact, is fully capable, and fully capable of

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1 satisfying the actual safe shutdown earthquake.

2 We explained this in the departures
3 report. In the departures report we explained we did
4 this further analysis. It is called a soil structure
5 analysis.

6 And it actually determines what are, you
7 know, given the safe shutdown earthquake, what are the
8 actual loads on the foundations in this structure
9 members.

10 You then compare that to what were the
11 loads that were posited in the DCD. What we showed is
12 when you do that analysis, the actual loads, from the
13 actual safe shutdown earthquake, are below the loads
14 that were posited for the structural members and
15 foundations of the standard plant.

16 And, as a result, that standard plant is
17 suitable. This is -- I mean, a lot of this goes into
18 what we are doing. But it is spelled out in our
19 application.

20 What is really incumbent on an Intervenor
21 who wants to challenge this, is to do more than come
22 in and just say you can't have exemptions.

23 They should have someone who understands
24 the process and explains why what we are doing is
25 inappropriate. That is totally lacking in their

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1 contention.

2 JUDGE COLE: Okay, thank you. So in the
3 design control document they have some assumed seismic
4 requirements that they put in there?

5 MR. LEWIS: Yes.

6 JUDGE COLE: For sites all over the
7 country?

8 MR. LEWIS: Yes.

9 JUDGE COLE: Why didn't they, also, have
10 in the design control document, or in a preamble to
11 it, that when you actually have measured the site
12 characteristics, specifically for seismic design, and
13 have developed this safe shutdown earthquake
14 requirements, why can't you just say you can then
15 substitute your specific site characteristics, in
16 place of this assumed characteristic?

17 MR. LEWIS: Well, you can. But then you
18 have to do the further analysis to determine, okay,
19 using my site-specific spectra, what are the loads,
20 the actual loads that the foundations and the
21 structural members are going to see.

22 JUDGE COLE: But you are dealing with your
23 own specific plant.

24 MR. LEWIS: Well, what you are doing is
25 you are dealing with a standard plant, and you are

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1 trying to show, using my actual site-specific spectra,
2 you know, is this standard plant capable of meeting
3 those site-specific spectra.

4 And the answer, here, that we have shown
5 in our exemption request is yes.

6 JUDGE COLE: How come, under these
7 exemption requests, for design control documents?

8 MR. LEWIS: I think that most of the
9 standard plants have not put their spectra in Tier I.
10 Mitsubishi has this design spectra as a Tier I
11 document.

12 I think the AP1000, and I'd have to go
13 back and have the same assumed postulated spectra.
14 And, in fact, the people that have applied for the
15 AP1000 have the same exceedences.

16 But I think they put their spectra in Tier
17 II. And where you have the spectra in Tier II, it is
18 just a departure that gets evaluated, non- exemption
19 to graphs.

20 So I think for some reason Mitsubishi
21 decided to make this a Tier I parameter and, as a
22 result, we didn't have the same exemption. If they
23 hadn't put it in Tier I, if they just put it in Tier
24 II, Tier II are the design requirements in a DCD that
25 are approved, but aren't considered part of the rule.

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1 JUDGE COLE: Okay.

2 MR. LEWIS: You can depart from those.
3 And the only reason we are applying for an exemption
4 here is because this spectra happens to be Tier I
5 instead of Tier II.

6 JUDGE COLE: Thank you.

7 MR. LEWIS: I'm actually not aware of
8 other people having this same exemption. But I am
9 aware of many plants that have high frequency
10 exceedences and, therefore, have to go through this
11 analysis.

12 CHAIR SPRITZER: So this is more than an
13 ordinary departure, it is a departure that requires
14 some sort of approval, by the NRC Staff, that you
15 actually get an exemption?

16 MR. LEWIS: Yes.

17 CHAIR SPRITZER: My understanding is for
18 most departures you don't, necessarily, have to get an
19 approval from the Staff.

20 MR. LEWIS: Yes, if you are getting a
21 departure from a Tier II requirement, you know, you
22 put that departure in your application, the Staff
23 evaluates it.

24 If it happens to relate to a Tier I
25 parameter then, you know, you put it in the

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1 application. But you would need an exemption.

2 JUDGE MIGNEREY: Would you mind, for those
3 of us who are not so DCD oriented, to explain the
4 difference between the Tier I and a Tier II?

5 MR. LEWIS: Yes. The NRC's practice has
6 been, in the documents that control standard plant
7 designs, to divide up the design information into two
8 categories, Tier I and Tier II.

9 Tier II is, usually, an elaboration of
10 Tier I information. Tier I is certain fundamental
11 information that the NRC wants to control, by rule, in
12 order to promote standardization.

13 And, therefore, if an Applicant, a COL
14 Applicant who is referencing this design wants to
15 change a Tier I requirement, you know, he has to apply
16 for an exemption.

17 Tier II is a lot of additional design
18 information that the NRC is more willing to allow
19 changes to, under certain standards. And there are
20 change regulations, in the design certification rules,
21 allow Tier II information to be changed, allowing an
22 Applicant to take a departure, if it meets certain
23 tests.

24 And so it is only a control. You know,
25 what is the particular change process for different

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1 types of information.

2 In either case, with respect to an
3 exemption or a departure, you have to show that your
4 plant is safe.

5 JUDGE MIGNEREY: Thank you.

6 CHAIR SPRITZER: Anything further, Mr.
7 Lewis? If not we will move on.

8 MR. LEWIS: Just on a couple of your
9 questions, very briefly.

10 CHAIR SPRITZER: Okay.

11 MR. LEWIS: You had asked questions about
12 52.39(c)1. Our view is that that regulation is not
13 applicable at all. We are not seeking any change to
14 the safe shutdown in earthquake established in the ESP
15 proceeding, and we don't understand this contention
16 going to that.

17 We are seeking an exemption from a Tier I
18 requirement in the DCD. And that process is governed
19 by 10CFR52.63(b)1.

20 CHAIR SPRITZER: Just so I'm clear in your
21 position. If they had come forward with an expert,
22 such as Mr. Gundersen and said, this exemption would
23 create, if granted, would create an undue risk to
24 public health and safety for the following reasons,
25 and given at least some plausible explanation of what

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1 those reasons were, we could hear such a contention?

2 MR. LEWIS: Yes. And, in fact, 52.63(b)1
3 says those issues can be litigated, if we are seeking
4 an exemption from a Tier I requirement.

5 And our position, here, was not that a
6 challenge to this exemption was barred by the ESP
7 proceeding. Our position also is not that this
8 exemption request is untimely.

9 Our position, here, was it seems to be
10 that BREDL is simply saying you can't seek this
11 exemption. That was a challenge to the rules and
12 wrong, as a matter of the rules.

13 And with respect to their suggestion that,
14 you know, perhaps it was improper for some other
15 reason, they just never explained why. They never
16 addressed the analysis that we had, that showed with
17 this exemption our design still meets the site-
18 specific ground motion.

19 CHAIR SPRITZER: Very good. Anything else
20 you wanted to add?

21 Any other -- you probably covered most of
22 the questions that we asked, but anything else?

23 MR. LEWIS: I think that is it, thank you.

24 CHAIR SPRITZER: Let's move on and hear
25 from the Staff.

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1 Ms. Carpentier?

2 MS. CARPENTIER: Thank you. The two
3 parties that have spoken already, have already
4 addressed a lot of these issues, but I will go through
5 our assessment and our pleading.

6 The contention, itself, seems to have two
7 basic strands to it. The first of these strands
8 relates to the seismic source at the north Anna site,
9 the issues that are relevant to 10CFR part 100,
10 section 23, and the associated guidance.

11 This portion of the contention overlaps,
12 considerably, with contention 2 that the Board has
13 already considered in this proceeding, in connection
14 with the earlier COLA. Some sentences are actually
15 verbatim.

16 And this issue has also been resolved in
17 the ESP proceeding as has been discussed. The Board
18 discussed it, earlier, in connection with its
19 objection of contention 2.

20 And the Intervenors have not, in their
21 pleadings, did not advance any argument as to why it
22 should be reopened.

23 Issues resolved at the ESP stage may be
24 revisited, in some circumstances, under the provisions
25 of 10CFR52.39(c)1.

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1 The Intervenors today, for the first time,
2 argued that this should be considered, the exemption
3 request that is under consideration here, should be
4 considered new information that would meet the
5 criteria of one of these.

6 But that argument doesn't hold water given
7 the nature of the exemption request here.

8 CHAIR SPRITZER: Well, let me just ask
9 this.

10 MS. CARPENTIER: Yes?

11 CHAIR SPRITZER: At the ESP stage, let's
12 assume that we construe the contention, and I think
13 that is part of the problem, here, is trying to figure
14 out exactly what the contention is.

15 But let's assume we construe it as saying
16 they don't meet the criteria for an exemption, because
17 it would be an undue risk to public health and safety.

18 And that is an exemption from the DCD for
19 the APWR. That issue, certainly, was not resolved at
20 the ESP stage, was it?

21 MS. CARPENTIER: Certainly not. That is
22 where I was about to go.

23 CHAIR SPRITZER: Great. If we construe
24 the contention in those terms, what if anything, is
25 the problem with admitting it, in your view?

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1 MS. CARPENTIER: Certainly. We agree that
2 under 10CFR52.63(b)1 there is no procedural bar to a
3 contention on the exemption request. Exemption
4 requests may be challenged, they are permitted.

5 The Applicant is allowed to request them,
6 and the Intervenors are allowed to challenge them.
7 However, a contention that merely alleges that these
8 exemption requests are impermissible, doesn't go far
9 enough, it doesn't have the content that is required.

10 In this case the analysis that is
11 contained in the COLA, and referenced in the exemption
12 request itself, and the associated departure, is a lot
13 of material.

14 It is, mostly, in chapter 3 of the FSAR.
15 The appendix, appendix 3NN alone is over 200 pages
16 long. And all of it is part of the COLA and,
17 legitimately, is potentially subject to challenge in
18 this proceeding.

19 However, the Intervenors have not
20 challenged it substantively. And since they have not
21 stated what their objection to it is, they failed to
22 meet the contention pleading requirements of 10CFR
23 section 2.3-9(f)1.

24 CHAIR SPRITZER: Okay.

25 MS. CARPENTIER: I would add that

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1 applicant's for COLs are allowed to, they don't have
2 to reference a DCD at all, they can do all their
3 design related analysis directly in the COLA.

4 And exemptions from specific portions of
5 the DCD are also contemplated by our rules, in which
6 case they have to put the information in the COLA.

7 CHAIR SPRITZER: I take it the Staff has
8 not yet acted on this exemption request, has it?

9 MS. CARPENTIER: No, it has not.

10 CHAIR SPRITZER: And it will be in your
11 SER when it comes out?

12 MS. CARPENTIER: Yes. Let's see, other
13 questions that you have raised. You asked,
14 specifically, about materiality in the NRC's
15 determination.

16 And, of course, the NRC reviews everything
17 that is in the COL. The four regulations that you
18 cited here don't really have the materiality test
19 associated with them, and we will be reviewing this
20 exemption request.

21 Materiality comes up in connection with
22 contentions that challenge any particular part of the
23 analysis. And then we have to look at whether or not
24 the challenge, itself, is substantial and could affect
25 the outcome versus some decision to use fly specking,

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1 or words related to aspects of the analysis that might
2 not be substantial or critical to the ultimate
3 outcome.

4 And that is related to the fact that the
5 actual challenge, itself, is not clearly specified.
6 It is, you know, we don't know what it is and,
7 therefore, we can't say whether it is material or not
8 at this stage.

9 CHAIR SPRITZER: All right. Anything
10 further from the Staff?

11 MS. CARPENTIER: No.

12 CHAIR SPRITZER: Thank you. We will give
13 the Intervenors, we cut you off a little bit, so we
14 will give you ten minutes for rebuttal.

15 MR. RUNKLE: Well, in the contention,
16 itself, Dominion has improperly requested a site-
17 specific exemption from the design control document
18 Tier I for proposed North Anna Unit 3.

19 It is a clear, it is obviously a genuine
20 dispute between the parties. I certainly would cross-
21 examine my colleague, here, on some of the facts that
22 he was putting out.

23 And, certainly, you know putting this out
24 in front, at a hearing, certainly would bear some
25 fruit.

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1 Now, going back to the question about that
2 my statement, that they knew they weren't going to
3 comply with the standards. And looking at the COLA,
4 revision 3 part 7, which is a departures report, dated
5 June 2010, looking at the exemption subjects, the
6 seismic spectra exceedences.

7 And I'm going to, just so that we have
8 this in the record in front of you, pursuant to
9 10CFR52.7, and section Viii, point A, point 4, of the
10 design certification rule, an exemption is requested
11 from the DCD Tier I information, okay?

12 The safe shutdown earthquake, which is --
13 they call SSE, so safe shutdown earthquake ground
14 motion and related certified seismic design response
15 spectra, again the acronym CSDRS, are specified in DCD
16 Tier I, table 2.1-1, key site parameters.

17 So the unit 3 site-specific seismic
18 spectra exhibited exceedences when compared to this
19 certified seismic design response spectra, both
20 horizontal and vertical, are provided in the DCD Tier
21 I, figures 2.1-1 and 2.1-2.

22 The site-specific safe shutdown earthquake
23 peak ground acceleration is greater than the value of
24 .3G, as defined in DCD Tier I table 2.1-1.

25 So they are saying that after -- they need

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1 an exceedence because their site-specific assessment
2 on this reactor is greater than the DCD Tier I.

3 As a result a request of exemption from
4 DCD Tier I information, above-referenced table and
5 figure is required.

6 So they view site-specific, their site-
7 specific conditions, that had been addressed in the
8 ESP. And they are referring to that site twice, as
9 part of their departure report, where they ask for the
10 exemption, they are saying they exceed those numbers,
11 on that site, for that specific reactor DCD.

12 And that is, I mean, that is the basis for
13 the contention. When, in their exemption, they are
14 saying they are exceeding that, so rather than to
15 purport any modifications to the plant, what they have
16 done is say we are going to get an exemption because
17 we are exceeding those site-specific standards.

18 JUDGE COLE: Mr. Lewis said that those DCD
19 figures are estimates that might be suited, more, to
20 west coast than east coast. How do you respond to
21 that?

22 MR. RUNKLE: Well, I would like to put him
23 up on the stand on that. I mean, again, as I had
24 suggested earlier, that we can really get into that
25 kind of evidence.

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1 A quick response to that is, yes, it is an
2 estimate, but they are based on safety considerations
3 to protect public health and safety. Their numbers
4 exceeded that.

5 And rather to, you know, suggest
6 modifications, they are asking for an exemption.

7 CHAIR SPRITZER: So if I'm understanding
8 your argument, you basically think option one, what
9 they ought to do first, before getting an exemption,
10 is redesign the plant, in some ways, so that they
11 don't need an exemption?

12 Is that, am I fairly summarizing your
13 position?

14 MR. RUNKLE: Yes, in a general sense, yes.

15 CHAIR SPRITZER: Now, therefore, aren't
16 you really taking issue with the NRC's regulations
17 which, as far as I'm aware, don't say that. They
18 simply say you can get an exemption if you meet
19 certain criteria.

20 MR. RUNKLE: Well, if they -- I mean, as
21 we have strongly, I mean, our position is pretty
22 strong, that we don't think that the exemption is
23 proper.

24 It is a site-specific exemption based on
25 their faulty analysis of the seismic conditions. And

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1 that rather than to do the modifications, I mean, our
2 suggestion is not that they modify the plant.

3 Our suggestion is that you don't grant
4 them the COLA. And if they want to come back with a
5 proper application, they can do that.

6 Or if they wanted to amend the ESP to
7 reflect actual conditions, so there are a lot of
8 options. And I think that because it is matter of
9 genuine dispute, it is certainly -- of contentions,
10 this is one that is properly before you, and certainly
11 can be argued.

12 I would like to argue it whether this is
13 a western standard or an eastern standard. We do
14 note, from the record on the ESP and the COLAs that
15 there are seismic activities and that the only way
16 that that plant can be sited there is get an exemption
17 from, a site-specific exemption based on what the
18 design criteria is.

19 JUDGE MIGNEREY: Now, I want to make sure
20 I stay away from merits of this case, because that is
21 always the grey area.

22 But it is my understanding that the
23 problem is that, sort of, the Tier I is sort of a
24 little bit flawed, and where they put this assumption
25 of seismic activity.

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1 And that in other DCDs, for other plants,
2 they move that to a more site-specific Tier II
3 portion, right?

4 MR. LEWIS: It is not site-specific, but
5 they have it in Tier II information, yes.

6 JUDGE MIGNEREY: In Tier II information,
7 so my understanding is that the Tier I DCD analyzes
8 the seismic capabilities of the plant, using a certain
9 seismic spectrum?

10 MR. LEWIS: Yes.

11 JUDGE MIGNEREY: And that seismic spectrum
12 is not correct for your site?

13 MR. LEWIS: Yes, it doesn't bound our
14 site.

15 JUDGE MIGNEREY: Right. So, therefore,
16 the DCD is essentially flawed in that respect?

17 MR. LEWIS: I wouldn't call it flawed.
18 They made it an assumption that they used for design.

19 JUDGE MIGNEREY: Right.

20 MR. LEWIS: We have to show either that we
21 meet that assumption, or we have to provide further
22 analysis.

23 JUDGE MIGNEREY: Right.

24 MR. LEWIS: We are in that second mode.

25 JUDGE MIGNEREY: Right.

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1 MR. LEWIS: Okay, we didn't meet that
2 assumption, now we have to provide further analysis.
3 This exemption is not just an exemption saying we are
4 not doing anything.

5 It is an exemption that says we don't meet
6 this assumption, therefore, we now have to do further
7 analysis to show that our plant is just fine.

8 JUDGE MIGNEREY: Right. So the assumption
9 is not applicable to your site?

10 MR. LEWIS: Yes.

11 JUDGE MIGNEREY: Okay. But it has nothing
12 to do with the safe shutdown envelope that was already
13 determined?

14 MR. LEWIS: We are not taking, we are not
15 changing the site-specific safe shutdown earthquake,
16 and the site-specific motion response spectra that
17 were established in the ESP proceeding.

18 We are not taking exemption from those
19 things, those are not changing.

20 JUDGE COLE: Because that is a
21 characteristic of the site?

22 MR. LEWIS: Correct.

23 JUDGE MIGNEREY: Right.

24 CHAIR SPRITZER: In other words, you have
25 to show your plant is just as safe as the one, in

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1 terms of dealing with --

2 MR. LEWIS: Yes, and what --

3 CHAIR SPRITZER: -- an earthquake.

4 MR. LEWIS: -- we are doing now is showing
5 that the design we are going to build will meet the
6 site characteristic.

7 CHAIR SPRITZER: You just can't rely on
8 the DCD entirely, because your site has different
9 characteristics and --

10 MR. LEWIS: Yes.

11 CHAIR SPRITZER: -- geological
12 characteristics.

13 MR. LEWIS: It didn't marry up perfectly
14 with the design, with the site assumption that the DCD
15 was based on. So, therefore, we needed to do further
16 analysis.

17 CHAIR SPRITZER: Assuming that what he is
18 saying is correct, does that give you any --

19 MR. RUNKLE: Well, I would like to --

20 CHAIR SPRITZER: -- reassurance that they
21 really are going to have to demonstrate that their
22 plant would be safe, they just can't rely on the
23 assumptions made in the DCD?

24 MR. RUNKLE: I would like to, first of
25 all, address Judge Mignerey's characterization of the

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1 DCD as flawed. There is no, I mean, if I would say
2 that to you, you would criticize me for challenging
3 the NRC regulations.

4 Because this has been approved as a
5 certified design. There are Tier I things that were
6 important to the NRC to both the manufacturer, both
7 the companies, and the NRC, to put those in there, as
8 Tier I, as very important items.

9 And, you know, to get out of those Tier I,
10 I wouldn't characterize it as saying that it is
11 flawed, because that is an important item. It was an
12 important item because seismic, the safe seismic
13 shutdown is a very important issue for public health
14 and safety.

15 JUDGE MIGNEREY: But the seismic
16 assumption doesn't match the current site.

17 MR. RUNKLE: Well, that is the nub of it,
18 isn't it? Because it doesn't match the present site
19 is because the present site can't meet the seismic
20 safe shutdown standards that are in the regulations.

21 And they have asked, that is what they
22 have asked for an exemption for. Yes, the site has a
23 certain seismic characteristics, and they can't meet
24 those site characteristics. So they have to get an
25 exemption from it, rather than to modify the design to

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1 meet those characteristics.

2 They have changed the numbers, but they
3 haven't changed the plant at all.

4 JUDGE MIGNEREY: But, as I see, the issue
5 is that the plant is analyzed within a certain
6 envelope of frequencies. If you have a different
7 envelope of frequencies you need to reanalyze the
8 capabilities of that plant.

9 That is how I understand the situation.

10 MR. RUNKLE: And the reason why they have
11 that envelope of characteristics, is because it was
12 determined, in developing the DCD, and approved by the
13 Commission, is because those were important health and
14 safety considerations, that were Tier I
15 considerations, that you don't change.

16 Because then if you go outside that
17 envelope you are going into an area that creates an
18 undue risk on public health and safety.

19 And so, Judge Spritzer, I guess my answer
20 to your question is, no, I'm not relieved on this at
21 all.

22 CHAIR SPRITZER: All right. I think, you
23 know, part of the problem may be, as I understand what
24 the Applicant and the Staff are telling us, is that
25 this design spectra -- you understand that a design

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1 control document is kind of an abstract creation.

2 It is not focused on a particular site, at
3 least not normally. It is, simply, a general design
4 for a plant. And, apparently, with respect to
5 geology, they have to make certain assumptions, that
6 may or may not apply.

7 Those assumptions may not be entirely
8 correct for North Anna, Virginia, and maybe other
9 places as well. So, in Dominion's case, they have to
10 say, okay, we don't have our design spectra, it don't
11 look like the design spectra that Mitsubishi assumed
12 when they created this DCD.

13 We are going to have to look at our own
14 design spectra and show that we can still have a safe,
15 meet the safe shutdown earthquake criteria, or test,
16 or whatever the right term is, based on our individual
17 design spectra, rather than those that were assumed by
18 Mitsubishi.

19 But that, by itself, doesn't seem to me to
20 be a safety problem, if they are still going to have
21 to meet the same test. But maybe you see it
22 differently.

23 MR. RUNKLE: Again, I would not
24 characterize the DCD as an abstract document. The
25 reason why all the Tier I and Tier II items are put in

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1 there, and why this review of this DCD took years, and
2 years, in both Staff review, and both companies, and
3 the NRC approved it, is because those are important
4 health and safety considerations.

5 And if their site does not fit those
6 health and safety considerations that is what we think
7 that there are no special circumstances that could
8 have that kind of risk on the public health and
9 safety.

10 JUDGE MIGNERREY: But, as I understand it,
11 the health and safety considerations are the outcome
12 of the analysis, using a specific spectral
13 distribution.

14 And if you do the same analysis using your
15 spectral distribution, and end up with the same health
16 and safety results, to me that is not violating the
17 safe shutdown criteria.

18 CHAIR SPRITZER: Let me just ask the
19 Staff. Do you, is it your position that the, what are
20 they called, the design spectra are they, themselves,
21 a safety standard, or are they simply, what I'm
22 interpreting, is kind of an assumed site
23 characteristic that was used when the DCD was
24 prepared?

25 MS. CARPENTIER: The latter. The DCD in

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1 this case has a statement that amounts to what you
2 have just stated. That it is possible to meet all
3 relevant standards, while doing site-specific
4 analysis.

5 CHAIR SPRITZER: Okay. All right, I think
6 we understand the parties' positions.

7 Was there anything further from the
8 Intervenors?

9 MR. RUNKLE: No, I appreciate the
10 opportunity to be heard today, thank you.

11 CHAIR SPRITZER: Okay. Let me thank all
12 the parties' representatives who are here today. It
13 has been very helpful argument for me, and I'm sure
14 for my fellow judges as well.

15 Let me, again, thank the Louisa County
16 government for extending their courtesy, and allowing
17 us to use their very nice facility.

18 And unless there is anything else, I
19 believe we will adjourn. I will note that we will try
20 and get a ruling out, I think it is reasonably safe to
21 assume we will have something out by the end of the
22 month.

23 Again, thank you for your arguments today.

24 (Whereupon, at 11:50 a.m., the above-
25 entitled matter was concluded.)

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in the matter of: Dominion Virginia Power

Name of Proceeding: Oral Arguments

Docket Number: 52-017-COL

ASLBP Number: 08-863-01-COL

Location: Louisa, Virginia

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