

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: South Texas Nuclear Generating Company  
Oral Argument

Docket Number: 50-498-LR and 05-499-LR

ASLBP Number: 11-909-02-LR-BD01

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1 APPEARANCES:

2 On Behalf of ASLBP:

3 AUDREY JONES, ESQ.

4 RICHARD S. HARPER, ESQ.

5 MAXWELL C. SMITH, ESQ.

6 Office of the General Counsel

7 Mail Stop - O-15 D21

8 U.S. Nuclear Regulatory Commission

9 Washington, DC 20555-0001

10 (301) 415-1246

11

12 On Behalf of STP Nuclear Operating Company:

13 STEVEN P. FRANTZ, ESQ.

14 STEPHEN J. BURDICK, ESQ.

15 of: Morgan, Lewis & Bockius, LLP

16 1111 Pennsylvania Avenue, N.W.

17 Washington, D.C. 20004

18 (202) 739-5460

19 sfrantz@morganlewis.com

20 sburdick@morganlewis.com

21

22

23

24

25

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On Behalf of Petitioners Sustainable Energy  
and Economic Development (SEED) Coalition and  
Susan Dancer:

ROBERT V. EYE, ESQ.

of: Kauffman & Eye

Columbian Building

112 S.W. 6<sup>th</sup> Avenue

Suite 202

Topeka, Kansas 66603

(785) 234-4040

bob@kauffmaneye.com

ALSO PRESENT:

JONATHAN C. ESER, Law Clerk

KAREN HADDEN, SEED Coalition

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

10:03 a.m.

1  
2  
3 JUDGE SPRITZER: Let's go on the record,  
4 Mr. Court Reporter, whenever you're ready.

5 COURT REPORTER: I'm ready, Your Honor.  
6 We're on the record.

7 JUDGE SPRITZER: Good morning. We are  
8 here this morning and my name is Ron Spritzer. I'm  
9 Chairman of this Atomic Safety Licensing Board. We  
10 are here this morning in the matter of STP Nuclear  
11 Operating Company. This is the license renewal  
12 application for the South Texas Project Units 1 and 2.  
13 It is NRC Docket Nos. 50-498-LR and 50-499-LR. And  
14 the ALSBP No. is 11-909-02-LR-BD01.

15 And we are here this morning to hear oral  
16 argument on standing and contention and admissibility.  
17 We should have members of the public listening. They  
18 are on phones, however, that don't allow them to  
19 participate. Simply to listen in.

20 Let me begin by asking the other judges on  
21 the Board to identify themselves.

22 JUDGE TRIKOUROS: Yes. I am Judge Nick  
23 Trikouros.

24 JUDGE FOULKE: I am Judge Larry Foulke.

25 JUDGE SPRITZER: And let's go around again

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1 and have the representatives. I think we can limit it  
2 to those who will actually be participating in the  
3 argument to identify themselves starting again with  
4 the Petitioners.

5 MR. EYE: This is Robert Eye for the  
6 Petitioners.

7 JUDGE SPRITZER: And for the NRC staff.

8 MS. JONES: This is Audrey Jones, NRC  
9 staff.

10 JUDGE SPRITZER: And for the --

11 MS. JONES: With Richard Harper as well as  
12 Maxwell Smith.

13 JUDGE SPRITZER: Okay. And for the  
14 Applicant.

15 MR. FRANTZ: This is Steve Frantz. And I  
16 have with me Stephen Burdick.

17 JUDGE SPRITZER: Okay. If you can when  
18 you're not speaking it might be a good idea to mute  
19 your phone at least if you might be chatting with the  
20 person next to you or something like that.

21 In terms of the order of argument, we'll  
22 start out with the Petitioners. As between the Staff  
23 and the Applicant, I don't know if you -- You call can  
24 choose among yourselves who wants to go second and who  
25 wants to go third. We'll leave that up to you.

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1 I just violated my own rule just now. But  
2 it would be helpful if everyone when they're speaking  
3 before you start speaking try to remember to identify  
4 yourself. I think that will make the Court Reporter's  
5 job a good deal easier.

6 One thing I do need to mention before we  
7 get started on the argument and that is the question  
8 of certain information that was cited in the footnotes  
9 in the amended petition filed by the SEED Coalition.  
10 It's my understanding that some or all of this  
11 information is information subject to a protective  
12 order in another case, the Comanche Peak case. We  
13 don't want to hear any discussion of the substance of  
14 that information.

15 We will try and avoid asking questions  
16 that would lead to an answer that involves disclosing  
17 that protected information. If by some chance you  
18 think an answer that you might give to a Board  
19 question requires or would lead you into disclosing  
20 that information you can simply say, "I'd like to  
21 answer that, Your Honor, but that would require me to  
22 get into protective information." And that will be  
23 the end of it. So we want to be as careful as we can  
24 to avoid disclosure of any protective information.

25 We haven't set time limits for the

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1 arguments. We have two hours which we think should be  
2 more than enough for the issues here. So we'll just  
3 get started. We will of course be asking questions.  
4 Nobody is under any obligation, however, to talk for  
5 longer than they feel is necessary. So we may well  
6 finish ahead of schedule. That's no problem if we do.

7 Very well. Let's start with the  
8 Petitioners. Mr. Eye.

9 MR. EYE: Your Honor, as a preliminary --  
10 This is Robert Eye. As a preliminary matter having  
11 consulted with our client and so forth in the interest  
12 of not burdening this record any more than necessary,  
13 the Petitioners would be amenable to withdrawing their  
14 request for oral argument at this time and letting the  
15 Board proceed on decision on the Petition based on the  
16 record that's in place at this point.

17 JUDGE SPRITZER: Well, we have gone to  
18 some trouble to assemble people here today. It would  
19 have been nice if we'd known this a little earlier.

20 MR. EYE: I understand, Your Honor. I  
21 apologize for that. But at any rate that's --

22 JUDGE SPRITZER: All right. If we -- We  
23 can't really make you talk if you don't want to talk.  
24 We might have some questions for you though. Are you  
25 prepared to answer questions from the Board.

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1 MR. EYE: I'll do my best, Your Honor.

2 JUDGE SPRITZER: I know you're new to the  
3 case, at least, new since -- I assume your involvement  
4 was since you entered or about the time you entered  
5 your appearance. So if you're just not familiar  
6 enough to answer questions I suppose we'll have to  
7 live with that.

8 Staff or the Applicant, do you have any  
9 response on this rather surprising development?

10 MR. FRANTZ: This is Steve Frantz for the  
11 Applicant. As we indicated previously, we have no  
12 objection if there's no oral argument. We're prepared  
13 to rest on the written filings.

14 JUDGE SPRITZER: Very good. And Staff?

15 MS. JONES: And, Judge, we feel the same  
16 way. The NRC Staff, we've made our feelings about  
17 that known previously and we have no problem with the  
18 Judge -- with the Panel deciding on the pleadings.

19 JUDGE SPRITZER: We may have a few  
20 questions for both of you in any event. I assume you  
21 don't mind answering them since you're here. And Mr.  
22 Eye can respond to your answers and our questions if  
23 he wants to. I think there's at least one or two  
24 areas we'd like to cover with you.

25 MS. JONES: Okay.

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1 JUDGE SPRITZER: Now that we're here. I  
2 guess we can just effectively turn this into a  
3 question and answer session instead of a typical oral  
4 argument if Petitioners don't have anything they want  
5 to present.

6 Let us go, the Judges, confer among  
7 ourselves for a minute. We're going to mute our phone  
8 and hopefully be back with you in about a minute or  
9 so. Off the record.

10 (Whereupon, a short recess was taken.)

11 JUDGE SPRITZER: On the record. We have  
12 a couple questions that we're going to ask of the  
13 Staff and the Applicant and perhaps Mr. Eye as well.

14 Judge Trikouros.

15 JUDGE TRIKOUROS: Yes, I had one major  
16 area that I wanted to explore with respect to  
17 Contention 1. The contention basically indicates that  
18 the -- is related to fires and explosions associated  
19 with the 54(hh)(2) requirements. And, in other parts  
20 of the contention, it specifically mentions the fire  
21 protection system. So there's sort of a general  
22 statement in the contention but then a more specific  
23 reference to fire protection later in the contention,  
24 the parts of the contention statement.

25 And the question that I have for the Staff

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1 and the Applicant is as follows. Both of you in your  
2 pleadings in your answer to the Petition mention that  
3 the fire protection requirements that are referenced  
4 in Appendix A, Section 1.12 are dealing with -- are  
5 part of the current licensing basis of the plant.

6 And both of your answers go fairly deeply  
7 into explaining why this LOLA requirement is part of  
8 the current licensing basis. And you go on to say  
9 that as such it's being covered under the normal  
10 oversight program and therefore is not -- is out of  
11 scope with respect to the License Renewal Rule Part  
12 54.

13 Part 54, however, requires that the  
14 current licensing basis or one of the objectives of  
15 Part 54 is that the current licensing basis be assured  
16 to be protected so to speak over the course of the  
17 period of extended operation. So, therefore, a review  
18 of the current licensing basis is part of Part 54.  
19 And, as such, it seems to me that any structure,  
20 systems or components that are included in the LOLA  
21 area that might be subject to aging effects would be  
22 in scope for license renewal.

23 Depending on how one reads the contention,  
24 it's basically indicating that any review of LOLA  
25 equipment, specifically fire protection, was not done

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1 with respect to the aging effects in that array of  
2 equipment. No mention is made of that array of  
3 equipment in the license renewal application. I'd  
4 like to hear what the Staff and the Applicant say  
5 regarding that scope issue.

6 MR. FRANTZ: This is Steve Frantz for the  
7 Applicant. Section A1.12 of our license renewal  
8 application does address the fire protection  
9 components and discusses aging management for those  
10 components. The Interveners have not identified any  
11 component that should be within the scope that we've  
12 not addressed and also has not contested any of our  
13 aging management for those fire protection components.

14 JUDGE TRIKOUROS: Did the fire protection  
15 components that were reviewed in the license renewal  
16 application include components that would be required  
17 to meet the objectives of 50.54(hh)?

18 MR. FRANTZ: I don't believe that there  
19 are -- The kinds of fire protection components we're  
20 talking about, for example, we're talking about  
21 barriers and doors, concrete. Those types of  
22 components are not unique to 50.54(hh)(2). They can  
23 be used.

24 But then in general the kinds of  
25 components you're talking about for 50.54(hh)(2) are

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1 either -- they're additional components that had been  
2 established. And I hate to get into too much detail  
3 because we're getting into protected areas here. But  
4 they are additional components that had been  
5 established that are more active components. They're  
6 designed to provide additional water into the plant in  
7 the event you have a loss of large areas of the plant.

8 JUDGE TRIKOUROS: But would you agree that  
9 if there were any components associated with carrying  
10 out the functions required under 50.54(hh) that they  
11 would be subject to aging management?

12 MR. FRANTZ: Looking back at the scope of  
13 Part 54 and the scope is in 50.54 that basically is  
14 safety related systems. It is the capability to --  
15 It's failure to prevent accomplishment of a safety  
16 related function. It is systems specified that meet  
17 particular regulations including 50.48 which is the  
18 fire protection system and a number of other systems.

19 But if you look at 54.4, 54(hh)(2) is not  
20 listed there. And so those would not be specifically  
21 within the scope of license renewal.

22 JUDGE TRIKOUROS: But your pleadings  
23 clearly explain why 50.54(hh) is considered part of  
24 the current licensing basis. You know you say things  
25 like Part 50 and any licensed conditions are in fact

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1 part of the current licensing basis and then both of  
2 your, both Staff and the Applicant, go on I believe to  
3 talk about how all plants are subject to license  
4 conditions associated with 50.54(hh). So it's clear  
5 that 50.54(hh) is covered under the current licensing  
6 basis of the plant.

7 MR. FRANTZ: Yes, but not everything  
8 within the current licensing basis is within the scope  
9 of license renewal. For example, active components  
10 are certainly not within the scope of license renewal  
11 and they're screened out.

12 JUDGE TRIKOUROS: I understand. But  
13 wouldn't one have to look at all components associated  
14 with 50.54(hh) and determine which were active, which  
15 were passive and then evaluate whether or not the  
16 passive components should fall under the aging  
17 management program?

18 MR. FRANTZ: There are two types of  
19 screening. One is to screen out active and passive.  
20 The other is to screen out systems which are not  
21 within the scope of 54.4. And the systems that we've  
22 discussed under 50.54(hh)(2) are not among those  
23 listed in 54.4. So those can be screened out.

24 JUDGE TRIKOUROS: Does the Staff agree  
25 with that?

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1 MR. HARPER: Your Honor, this is Richard  
2 Harper for the Staff. We do agree with that.

3 JUDGE TRIKOUROS: So no components under  
4 50.54(hh) even if they are subject to aging effects  
5 should be evaluated under the license renewal  
6 application.

7 MR. HARPER: We don't know of any based on  
8 the contention that the Petitioner listed.

9 JUDGE SPRITZER: Forget about what the  
10 Petitioners may have listed. Do you know of any at  
11 all? This was Judge Spritzer by the way.

12 MR. HARPER: No, Your Honor. Staff isn't  
13 aware of any at all.

14 MR. FRANTZ: This is Steve Frantz again.  
15 Maybe if I can just clarify. You know, there are some  
16 systems and components that have a dual function.  
17 They can be used both for 50.54(hh)(2) and then for  
18 other purposes. And to the extent that they may be  
19 covered for other purposes then they are covered  
20 obviously but not because of the 50.54(hh)(2) by  
21 itself.

22 JUDGE TRIKOUROS: So you're saying it is  
23 specifically excluded.

24 MR. FRANTZ: I'm saying the 54.4  
25 identifies specifically what is within scope of

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1 license renewal and it is sections like 50.48, 50.49,  
2 50.61, 50.62, 50.63. 50.54(hh)(2) is not among those  
3 listed in Section 54.4(a)(3). And therefore because  
4 it's not one of the listed sections it's not within  
5 the scope of license renewal.

6 JUDGE TRIKOUROS: But I mean Part 50 is  
7 and there's no distinction made that said parts of  
8 Part 50 or.

9 MR. FRANTZ: I guess I have to disagree.  
10 Not everything within Part 50 is within the scope of  
11 license renewal.

12 JUDGE TRIKOUROS: And can you reference me  
13 to a regulation that excludes Part 50.54(hh)?

14 MR. FRANTZ: I'm saying it's not excluded  
15 specifically, but it's not included. And only those  
16 which are included are within the scope of license  
17 renewal. And again all I can do is refer you to 10  
18 CFR Section 54.4 which states what is within the  
19 scope. It does not identify what's outside the scope.  
20 And implicitly anything that's not listed here is  
21 outside of scope.

22 JUDGE SPRITZER: All right. So we should  
23 be looking at 10 CFR -- This is Judge Spritzer again --  
24 - 54.4 to see what's included and your position is  
25 that if it's not on the list it's implicitly excluded.

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1 MR. FRANTZ: That's correct.

2 JUDGE SPRITZER: All right.

3 MR. HARPER: Your Honor, this is Richard  
4 Harper for the Staff. Part 54, Section 30  
5 specifically states that licensee's compliance of the  
6 obligations under paragraph A of this section to take  
7 measures under its current license is not within the  
8 scope of the license renewal, pardon me, renewal  
9 review and therefore states that it is outside the  
10 scope of licensing renewal proceeding.

11 JUDGE SPRITZER: What section -- This is  
12 Judge Spritzer -- What section was that again?

13 MR. HARPER: Section 54.30.

14 JUDGE TRIKOUROS: This is Judge Trikouros  
15 again. Could you repeat what you said about Section  
16 54.30?

17 MR. HARPER: Yes. Section -- I apologize.  
18 Section 54.30 lists that the matters not subject to a  
19 renewal review. And under this, under Subsection B,  
20 it says, "The licensee's compliance with the  
21 obligation under paragraph A of this section to take  
22 measures under its current license is not within the  
23 scope of the license renewal review."

24 JUDGE TRIKOUROS: All right. We will look  
25 into that.

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1           Mr. Eye, do you have -- This is Judge  
2           Trikouros again -- any comments on this?

3           MR. EYE: Your Honor, to the extent that  
4           54.30 is construed to exclude the requirements under  
5           50.54(hh) it would require that the responses to loss  
6           of large areas accidents are sort of outside what we  
7           would expect to be subject to an aging analysis. And  
8           what the Staff and Applicant have stated on the record  
9           today is that there apparently aren't any components  
10          that fall within the responses to LOLA scenarios that  
11          are subject to aging analysis.

12          To a certain extent, the Petitioners are  
13          in a situation where I guess there is some deference  
14          that has to be allowed to the Staff and Applicant to  
15          the extent that they're making responses based on what  
16          their understandings are. But it would seem to  
17          Petitioners that this is a more dynamic analysis in  
18          terms of what's required to response to LOLA scenarios  
19          than the more fixed or static view that the Staff and  
20          Applicant have taken.

21          So it's frankly unfortunate given what we  
22          now know about LOLA responses and so forth and what  
23          may be required under various extreme accident  
24          scenarios that the drafter of the relicensing  
25          regulations didn't broaden that somewhat. But we are

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1 essentially -- We have the scope that's in place. And  
2 to the extent that these fires and explosions  
3 regulations fall inside or outside of it it's really  
4 dependent on what the drafters intended.

5 As Mr. Frantz points out, the laundry list  
6 of things in 54.4 seems to set the bounds for what is  
7 permitted in a relicensing consideration. But again  
8 to the Petitioners it would seem that these fire  
9 response/accident response capacities and capabilities  
10 to the extent that they require components that are  
11 able to perform as needed, when needed, should be  
12 considered as part of that aging analysis. Again  
13 Staff and Applicant have said that there aren't any  
14 such components and except the dual use function as  
15 Mr. Frantz pointed out that presumably would be  
16 subject to an aging analysis. So that's our view.

17 JUDGE SPRITZER: We're going to put the  
18 phone here on mute for just a second. We'll be back  
19 with you in about 30 seconds. Off the record.

20 (Whereupon, a short recess was taken.)

21 JUDGE SPRITZER: All right. This is Judge  
22 Spritzer. We're back on the record.

23 Judge Foulke.

24 JUDGE FOULKE: This is Judge Foulke. I  
25 don't have the code in front of me. So I've not been

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1 able to follow the 54.30 and the 54.4 arguments. But  
2 my simple question is are emergency fire pumps subject  
3 to aging analysis.

4 MR. FRANTZ: This is Steve Frantz. Active  
5 components are not subject to Part 54. They're  
6 screened out. And pumps would be included in that  
7 category.

8 MR. HARPER: This is Richard Harper for  
9 the Staff. We agree with that that they're not  
10 included.

11 JUDGE FOULKE: But piping components are  
12 not subject to aging analysis?

13 MR. FRANTZ: Piping would be included.  
14 Piping is if the system is in scope. Yes.

15 JUDGE SPRITZER: Is that -- This is Judge  
16 Spritzer. Is that based on the distinction between  
17 active and passive systems?

18 MR. FRANTZ: That's correct.

19 JUDGE SPRITZER: Okay. And how do we know  
20 --

21 MR. FRANTZ: Or maybe not systems. Active  
22 and passive components.

23 JUDGE SPRITZER: Components, all right.  
24 So a pump is active and a pipe that the water is  
25 pumped through is passive.

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1 MR. FRANTZ: That's correct.

2 JUDGE SPRITZER: All right.

3 Would it be helpful -- This is somewhat of  
4 a new area and I don't think this was covered in any  
5 real detail in the briefs. Maybe if we put out a one  
6 paragraph order saying we'd like the parties to  
7 address the following issue and have short, no longer  
8 than ten pages maximum responses.

9 I think that would be helpful for us. So  
10 unless anybody has a violent objection to that, I  
11 think that's what we're going to do. Anybody have any  
12 thoughts on that?

13 MR. EYE: Petitioners don't object to  
14 that, Your Honor.

15 MR. FRANTZ: Is there something we cannot  
16 handle through oral argument this morning?

17 JUDGE SPRITZER: I think it would be  
18 helpful for us to see a brief written response and we  
19 may formulate little more specific questions than what  
20 we've gotten today.

21 MR. FRANTZ: If that's the Board's desire,  
22 you'll obviously support that.

23 JUDGE SPRITZER: All right. Well, let's  
24 do this. We'll confer among ourselves. We were  
25 expecting that this argument was going to go a little

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1 differently than it did. And if we're going to issue  
2 something, we'll do it by the end of this week. If  
3 we're not we'll just go ahead and decide based on what  
4 we have here.

5 MR. FRANTZ: This is Steve Frantz. There  
6 are a number of other objections we've raised to these  
7 contentions including the fact that there is no  
8 factual support for the contentions, that they haven't  
9 disputed really what we have in the application. So  
10 I think all of those arguments also indicate  
11 regardless of how the Board might want to rule on this  
12 particular issue that the contention should be  
13 dismissed.

14 JUDGE SPRITZER: All right. We're not  
15 discounting any of your other arguments. We'll  
16 consider all of them.

17 Anything further from the Staff?

18 MS. JONES: No, Your Honor.

19 JUDGE SPRITZER: Anybody else have  
20 anything else? This is Ron Spritzer again. Does  
21 anybody have anything further they want to bring up  
22 this morning that we could resolve?

23 (No verbal response.)

24 All right. Hearing no further response,  
25 I think we're done. We'll go off the record.

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1 (Whereupon, at 10:33 a.m., the above-  
2 referenced matter was concluded.)  
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CERTIFICATE

This is to certify that the attached proceedings  
before the United States Nuclear Regulatory Commission  
in the matter of:                    South Texas, Unit 1 & 2

Name of Proceeding: License Renewal:

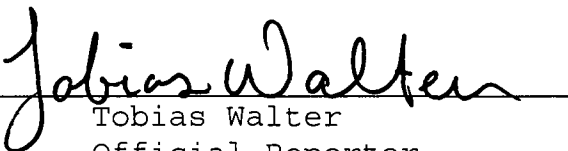
Conference

Docket Number:                    50-486-LR and 05-499-LR

ASLBP Number                    11-909-02-LR-BD01

Location:                            (teleconference)

were held as herein appears, and that this is the  
original transcript thereof for the file of the United  
States Nuclear Regulatory Commission taken by me and,  
thereafter reduced to typewriting by me or under the  
direction of the court reporting company, and that the  
transcript is a true and accurate record of the  
foregoing proceedings.



Tobias Walter  
Official Reporter  
Neal R. Gross & Co., Inc.