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NUCLEAR REGULATORY COMMISSION

Title: Southern Nuclear Operating Company
Oral Arguments

Docket Number: 52-025 and 52-026

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

ORAL ARGUMENTS

Tuesday, March 15, 2016

14 U.S. Bankruptcy Court
15 Federal Justice Center
16 Plaza Building
17 600 James Brown Blvd
18 Augusta, Georgia

19 The above-entitled matter came on for oral
20 argument at 10:00 a.m.

21 BEFORE THE LICENSING BOARD:

22 RONALD M. SPRITZER, Administrative Judge

23 DR. JAMES F. JACKSON, Administrative Judge

24 NICHOLAS G. TRIKOUROS, Administrative Judge

1 APPEARANCES:

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1 P R O C E D I N G S

2 JUDGE SPRITZER: Good morning. My name is
3 Ron Spritzer. I'm the chairman of this licensing
4 board, and we are here in the matter of Southern
5 Nuclear Operating Company, Inc., concerning Vogtle
6 Electric Generating Plants, Units 3 and 4. This is
7 docket number 52-025 and 52-026.

8 We are here to hear oral argument on both
9 standing and contention admissibility with regard to
10 the petition to intervene and request for a hearing
11 filed by Blue Ridge Environmental Defense League and
12 its chapter, Concerned Citizens of Shell Bluff, which
13 I will refer to collectively as the Petitioner.

14 As I said, my name is Ron Spritzer. I'm
15 an attorney. I am chairman of this board. Typically
16 our board licensing chairmen are attorneys. I have
17 two other Judges, as you can see, with me here today.
18 I'll ask them to briefly introduce themselves.

19 JUDGE TRIKOUROS: Nicholas Trikouros,
20 Administrative Judge, technical judge.

21 JUDGE JACKSON: I'm James Jackson. I'm
22 also a technical Administrative Judge.

23 JUDGE SPRITZER: And let's introduce the
24 parties' representatives, that is, just the people who
25 will be speaking today. Why don't we start with the

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1 NRC staff on my left.

2 MS. MIKULA: Good morning, Your Honors.

3 Olivia Mikula, counsel for NRC staff.

4 JUDGE SPRITZER: You're the only person
5 who'll be speaking today?

6 MS. MIKULA: Yes, Your Honor.

7 JUDGE SPRITZER: All right. Very well.

8 Let's move on to the Licensee, Southern Nuclear.

9 MS. RONNLUND: Good morning, Your Honor.

10 Millie Ronnlund, counsel for Southern Nuclear
11 Operating Company.

12 JUDGE SPRITZER: And you will be doing all
13 the arguments today?

14 MS. RONNLUND: Yes, sir.

15 JUDGE SPRITZER: And for the Petitioner?

16 MR. ZELLER: Good morning, Judge Spritzer.
17 My name is Lou Zeller, and I'm executive director of
18 Blue Ridge Environmental Defense League. I will be
19 speaking this morning. Also, two of my colleagues are
20 here with me.

21 JUDGE SPRITZER: Are they going to be
22 speaking, or are they just simply sitting here?

23 MR. ZELLER: Yes. Both speaking. Charles
24 Utley and Claude Howard, on different issues.

25 JUDGE SPRITZER: Okay. And who will be

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1 speaking on which of the issues?

2 MR. ZELLER: Claude Howard on standing.

3 JUDGE SPRITZER: Okay.

4 MR. ZELLER: And Rev. Utley on the
5 contention number 3, environmental justice.

6 JUDGE SPRITZER: Okay. You'll be doing
7 contentions 1 and 2 then?

8 MR. ZELLER: Pardon me. I'm having a
9 little trouble hearing you. I just have to tell you
10 that I do have a slight hearing impediment. I am
11 wearing hearing aids, which corrects most of it, but
12 if I ask you to repeat something, it's because I did
13 not hear you.

14 JUDGE SPRITZER: That's fine. I'll be
15 glad to repeat anything you need repeated. That goes
16 for anyone. So you'll be doing the argument on
17 contentions 1 and 2. Is that --

18 MR. ZELLER: Correct.

19 JUDGE SPRITZER: -- correct? Okay. Very
20 good.

21 For members of the public who may be in
22 attendance, we are going to be hearing argument, as I
23 said, on two issues, standing and contention
24 admissibility. Standing basically relates to whether
25 the Petitioners have demonstrated a sufficient injury

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1 or potential injury that they are entitled to invoke
2 the authority of this licensing board.

3 Contention admissibility is basically
4 looking at the arguments they've made and seeing if
5 those arguments meet the Commission's legal criteria
6 for granting a hearing request. If a hearing request
7 is granted, we would then go on to further proceedings
8 which might culminate in an evidentiary hearing.

9 For all those people who will be speaking,
10 please speak into the microphones. There should be
11 two microphones actually. One is for the lady over
12 here, our court reporter, who is taking everything
13 down, as well as the courtroom microphones that enable
14 us to hear you or hear you better.

15 We will provide -- we have set time limits
16 for each of the representatives, and the gentleman in
17 front of me, Mr. Strickland, our law clerk, will be
18 holding up a five-minute warning to let you know you
19 have five minutes left, and then the number zero to
20 indicate your time is up. Probably, though, before
21 you finish speaking, we will start asking you
22 questions.

23 Again, for members of the public who may
24 be in the audience, you probably were required or
25 prohibited from bringing your cell phone in with you.

1 If by any chance you have one, please turn it off.
2 There shouldn't be any talking during the argument.
3 We are here to listen to the parties' representatives.
4 We welcome the public to listen, but this is not a
5 public participation event.

6 As I indicated, there will be a transcript
7 prepared by the court reporter, and that will be
8 publicly available on the NRC's electronic hearing
9 docket as soon as it's prepared, and it's usually
10 within a few days after the argument is over.

11 There are breakout rooms. I hope you were
12 made aware of the fact that there are rooms that you
13 can use to conference in. Great. Finally, people who
14 are in the audience, if you do want to leave at any
15 time, that's fine. Just do so quietly.

16 Do any of the parties' representatives
17 have any questions before we move into standing?

18 (No response.)

19 JUDGE SPRITZER: Hearing no takers, I
20 think we're ready to get started then, so why don't we
21 move on and hear first on the issue of standing from
22 the Petitioner, 15 minutes.

23 Oh, one thing I forgot to mention. Since
24 we have four issues to deal with, three contentions
25 and standing, we'll probably go -- I hope we can get

1 through standing and the first contention before we
2 take a break. That would be about an hour, hour and
3 15 minutes from now. We'll hopefully take a ten- or
4 15-minute break, and my expectation is we can then
5 come back and hopefully finish by around one o'clock,
6 in which case, we would not need to break for lunch.

7 If things go slower than I expect, we'll
8 have to revise that schedule, but that's our plan for
9 today. So hopefully in about an hour and ten minutes,
10 we'll take a short break and then come back and
11 hopefully finish up before lunchtime.

12 Very well. Let's hear from the Petitioner
13 on standing. You can speak at the podium or at the
14 table.

15 MR. ZELLER: Thank you, Judge Spritzer.
16 My name is Louis Zeller. I'm executive director of
17 Blue Ridge Environmental Defense League.

18 The license amendment request that we're
19 here to discuss today fails to meet industry
20 standards. We have outlined that in our petition and
21 in our reply, having to do with concrete tolerances
22 which is the basis or the reason for the Licensee's
23 request for a license amendment.

24 As we have pointed out, it does not meet
25 American Concrete Institute guidelines and standards,

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which were a part of the licensing basis for this power plant, which is already under construction. Under 10 CFR 50.59, a licensee must get a license amendment approval from this Commission prior to implementing a proposed change, if the change would cause fission product barrier be exceeded or altered, or depart from a method of evaluation used to establish safety factors.

9 What our contentions will show is that the
10 basis of the conclusion made by the Licensee, Southern
11 Nuclear Operating Company, in this matter for
12 significant hazard has not been met.

19 JUDGE SPRITZER: Oh, okay. Go ahead.
20 Well, all right. But this will count your time on
21 standing. That's the issue we're hearing about now.
22 Is somebody else going to address standing from your
23 side?

24 MR. ZELLER: Yes. I do have -- pardon.
25 I didn't hear you. I told you I might not hear you

1 very well, so I do apologize.

2 JUDGE SPRITZER: No problem.

3 MR. ZELLER: Okay. So, yes. We do have
4 the issue of standing, which is the first bar to be
5 crossed, and the standard for this case, I believe, is
6 outlined, as it is on our brief, with the Entergy
7 Nuclear Vermont Yankee plant for Vermont Yankee
8 Nuclear Power Station, licensing board panel decision
9 04-28, and which goes to the fact that standing was
10 granted in that matter for a power upgrade for Vermont
11 Yankee, up about 20 percent from 1593 to 1912
12 megawatts thermal.

13 In that case, a 15-mile presumption for
14 standing was allowable, and we feel that this is
15 analogous to our situation here. We have members like
16 Claude Howard, who's here today to address this issue,
17 who lives just five miles from the plant.

18 JUDGE SPRITZER: All right. So you want
19 Mr. Howard to address standing? Keep in mind. We can
20 only consider what's in the record of materials that
21 you've supplied.

22 MR. ZELLER: Okay.

23 JUDGE SPRITZER: But if you want him to
24 address the standing issue, why don't we hear from
25 him.

1 REV. HOWARD: Good morning, Your Honor.
2 JUDGE SPRITZER: Good morning, Rev.
3 Howard.

4 REV. HOWARD: I'm Claude Howard from the
5 Shell Bluff area. I'm a resident of the area, and I
6 live approximately about five miles from the plant.
7 In the earlier part of this, we've come to understand,
8 sir, that standing is of the citizens what go -- what
9 happened prior and all this time, to come up to the
10 time, sir? Okay.

11 I lived in the area all my life, pretty
12 much all my life. I moved out for a while and moved
13 back, and in the early '70s, when this all began to
14 take place in Burke County, where Plant Vogtle wanted
15 to come down and build on the land, down in the area
16 where there was the less fortunate or poor people down
17 in that area, which they gave no consideration of what
18 they was about to do in order to be able to build that
19 plant down there.

20 And as they began -- the process began to
21 develop, the citizens, which was the poor and the less
22 fortunate in that area, was taken advantage of by this
23 company coming in, having so much power and authority,
24 and that the land and stuff in that area, they pretty
25 much took the land, what they wanted, in order to be

1 able to serve that purpose.

2 And through the years, it's been the same
3 thing over and over, wherein the less fortunate always
4 came in last, because of who they were and where they
5 stood. And when it come to the ability to be able to
6 stand up against a company of that sort, we had no
7 power, not in the system, because the system is always
8 against the poor and the less fortunate, because we
9 didn't have the money and stuff in order to be able to
10 support ourselves, in order to be able to go up
11 against the system.

12 And we didn't have lawyers -- we'd get
13 lawyers and things, but lawyers and things was afraid
14 to be able to deal with the system in that area. And
15 we as a people, we tried to stick together. We stuck
16 together, and we done our best. But through the
17 years, Plant Vogtle have always exceeded and done what
18 they wanted to do.

19 And now when they come up with this 1-5/8-
20 inch difference in the reactor casing, it's a
21 different story -- I mean, it's the same story. And
22 if you build a driveway, and the driveway is four
23 inches thick, and that driveway, if you take away 1-
24 5/8 from that driveway, you only have 2-3/8 left, and
25 you still have to drive over that -- driving over that

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1 driveway constantly, day in and day out. Sooner or
2 later, it's going to break.

3 And the same thing apply here, that we are
4 the people that live in the area, and if they go
5 down -- if they approve this and through the years,
6 while we're living in the area, we're the ones going
7 to be hurt in the process. But they'll be gone and
8 doing what they want to do, but we'll still have to
9 live there. And this is why I disagree with the
10 approval of it in that sense, because the less
11 fortunate has always been at the hands of the rich and
12 the more fortunate. And we are those people, the
13 peoples of color and less fortunate. And they doesn't
14 respect us in that way, sir.

15 JUDGE SPRITZER: How far is the Shell
16 Bluff area from --

17 REV. HOWARD: Plant Vogtle?

18 JUDGE SPRITZER: -- Plant Vogtle? Right.

19 REV. HOWARD: As the crow fly, about five
20 miles straight. About five miles. And that's where
21 I live, about five miles from Plant Vogtle.

22 JUDGE SPRITZER: And it's a predominantly
23 minority community?

24 REV. HOWARD: Yes, sir. During that time
25 when it came, it was -- majority was blacks in the

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1 area, and blacks own pretty much all the land down in
2 the area. And after that happened, most blacks' land
3 was taken or sold at a lower price than other land
4 that's in the area, and we as a people, we couldn't
5 fight the system, and it's still going on today.

6 And we -- the only thing we have to fall
7 upon and to stand on is what our parents gave us,
8 trust in the Lord and Savior Jesus Christ that he will
9 take care of us, and that's all we have. We can't
10 fight the system, because we have to obey the law of
11 the land, and that's what God's word says, obey the
12 law of the land, and that's what we try to obey and be
13 in obedience to it.

14 But at the same token, we must speak up
15 for our rights as a people, and if we don't speak up
16 for our rights as a people, then God can't help us.
17 And so we are here today, speaking up for our rights
18 as a people in Burke County and all those down around,
19 because we really need support from the system, but if
20 the system don't give us support, we're going to trust
21 God that he will prevail. And through the years,
22 that's what we've been trusting in and holding on to
23 His holy hand. Yes.

24 JUDGE SPRITZER: All right. Do any of my
25 colleagues have any questions on standing for Rev.

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1 Howard?

2 JUDGE JACKSON: I had a question on
3 standing that probably might be more appropriate for
4 Mr. Zeller. It relates to the formal petition and the
5 response to the answer. So maybe I should wait or --

6 JUDGE SPRITZER: Mr. Zeller --

7 JUDGE JACKSON: -- or ask Mr. Zeller to --

8 JUDGE SPRITZER: -- could you take the
9 stand, so to speak.

10 JUDGE JACKSON: Thank you, Rev. Howard.
11 Appreciate it.

12 MR. ZELLER: Yes.

13 JUDGE JACKSON: In your petition, you
14 argued for the 50-mile proximity as a basis for
15 standing, and as you know, when the NRC and staff and
16 the company came back with their answers, they
17 disagreed with that, and then you came back in your
18 response with what you mentioned earlier today, and
19 namely, citing the power uprate case as a precedent to
20 allow standing based on proximity.

21 I guess my question is: Could you expand
22 on the logic or the basis for saying that a power
23 uprate is analogous or similar in terms of its
24 potential impact to the wall thickness tolerance
25 that's involved in this amendment.

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1 MR. ZELLER: Yes, Judge Jackson. In the
2 case of the power uprate for Vermont Yankee, that was
3 about, like I said earlier, about a 20 percent
4 increase in the power, and so the 50.59 process, the
5 license application, the amendment was made in that
6 case. In this case, we have the tolerances for
7 concrete going from 1 inch to 1-5/8 inches, which is
8 about a 60 percent difference in the actual
9 tolerances.

10 And as we will point out as we discuss
11 further the other contentions is that we feel that
12 this is analogous to that situation. I would add that
13 each declaration that we submitted first and also by
14 Claude Howard states a particular concern about the
15 off-site impacts which are both routine and
16 accidental. And so, therefore, the --

17 In fact, it states that, in particular,
18 I'm concerned about releases of radioactive substances
19 to the air and water, an accident involving the
20 release of radioactive materials, and my ability to
21 protect myself and my family if a radioactive accident
22 were to occur. So that goes to the particular concern
23 by each of the declarants and also the fact that, I
24 believe, the proximity, certainly within five miles
25 and seven miles, would meet our burden in this case.

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2 JUDGE JACKSON: So are you arguing that,
3 say, a 20 percent change in power level is -- it's the
4 percentage change that you're saying leads to
5 analogous potential consequences? You cited the
6 change in the wall tolerance.

7

MR. ZELLER: Correct. Yes.

8

JUDGE JACKSON: Is there some reason to
believe that they have any relationship to one another
in terms of potential radiological release?

11

MR. ZELLER: Well, as we will discuss, the
potential for outside consequences go to the concrete
itself and the accident potential from, for example,
the production of hydrogen during an accident.

15

JUDGE JACKSON: Did you have any kind of
risk evaluation or arguments that showed comparability
between the dimensions and power level? I'm still
struggling with how they relate to one another.

19

MR. ZELLER: Well, a power uprate, of
course, was for an existing plant, and so it was not
the licensing basis in that case as in a combined
operating license as we have dealt with during the
past six or eight years at Vogtle. So it was a much
smaller matter, which was the power uprate of 20
percent.

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In this case, we're talking about an alteration in the construction and the standards for construction in this plant and perhaps future alterations, because we think this is just the tip of the iceberg in terms of other alterations, in fact. And we'll discuss that later.

7 But the change in the concrete tolerances,
8 we believe, is an analogous situation, because of the
9 consequences that it would lead to. For example, the
10 radiation impacts to the workers on site; radiation
11 impacts to the people living in the community within
12 five, ten miles of the power plant, if and when it
13 ever operates.

14 || JUDGE JACKSON: Thank you.

15 JUDGE SPRITZER: All right. I think the
16 Petitioner's time is about done or very close to it.
17 Do you have anything else, Mr. Zeller?

18 MR. ZELLER: That's all I have for you
19 today.

20 JUDGE SPRITZER: All right. Who will be
21 speaking next? The staff or the Licensee?

22 MS. RONNLUND: Your Honor, if I may have
23 a moment to prepare the courtroom before I begin, we
24 have a demonstrative that we'd like to use.

25 JUDGE SPRITZER: All right. Just for the

1 record, this is Ms. Ronnlund.

2 MS. RONNLUND: Yes, Your Honor.

3 JUDGE SPRITZER: Thank you.

4 (Pause.)

5 MS. RONNLUND: Good morning. As a little
6 bit of background, I know the board is aware, but just
7 for the context, the proceeding we're here today for
8 involves a license amendment to the Vogtle Units 3 and
9 4 combined license. That combined license was issued
10 in 2012, and the license amendment that has been
11 requested by Southern Nuclear is a change to the
12 thickness tolerance of four walls inside containment.

13 The first issue we've been asked to
14 discuss today is standing. As Your Honors are aware,
15 the Commission's requirements for standing are clear,
16 and a petitioner, in order to be admitted for hearing,
17 must meet those requirements. Here the central
18 question is: Does the proximity presumption apply?

19 The Commission has found that the
20 proximity presumption applies in cases where there is
21 an obvious potential for off-site consequences. The
22 proximity presumption is essentially a shortcut
23 standing analysis that allows the Petitioner to show
24 standing based on geographic proximity to the site.

25 The important fact about the Commission's

precedent on this issue is that in every case, the Commission requires an obvious potential for off-site consequences. In fact, in the case that Mr. Zeller cites in support of standing for BREDL, the licensing board particularly applied that same standard and found that the increase, the power uprate increased the radioactivity in the core, and it was that increase in radioactivity that led to an obvious potential for off-site consequences.

In this case, there is no such obvious potential for off-site consequences, because there is no increase source involved, and there is no increased dose to the public or increased dose present off site.

In order to demonstrate that there are no obvious -- there is no obvious potential for off-site consequences, I'd like to discuss in a little more detail the technical aspects of the amendment requested by Southern Nuclear.

19 JUDGE SPRITZER: Just so the record's
20 clear, the documents you've given us copies of and
21 that you're displaying here, these are the ones that
22 were provided last week to everyone, the filing you
23 made electronically?

24 MS. RONNLUND: Yes, Your Honor.

25 JUDGE SPRITZER: So I take it every -- Mr.

1 Zeller, you've seen these documents. You have copies
2 of them.

3 MR. ZELLER: Yes, Your Honor.

4 JUDGE SPRITZER: All right. And again so
5 the record's clear, can you just briefly identify what
6 you're talking about, what these are.

7 MS. RONNLUND: Yes. This is Figure 3.8.3-
8 1 from the Vogtle UFSAR, the final safety analysis
9 report. This is an overhead view, looking down. You
10 can see here the elevation is 71-1/2. Now, ground
11 level at the Vogtle site or grade is at elevation 100,
12 so this is a view showing below grade.

13 As you can see here, this square is the
14 reactor coolant drain tank room, which is connected to
15 this square here, module CA04 or the reactor vessel
16 cavity by a corridor. The wall in question -- the
17 first wall in question of the four that is being
18 discussed in this license amendment request is just
19 here, between the CA04 and CB65 modules. This wall
20 has a nominal thickness -- this concrete wall has a
21 nominal thickness of three feet, and the request is to
22 change the tolerance from plus or minus 1 inch to plus
23 or minus 1-5/8 inches.

24 Now, our next figure here, this is UFSAR
25 figure 3.8.3-1, sheet 3 of 7. This is also an

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1 overhead view. Now, this view is at 98-1/2 feet, so
2 we're still below ground level which is at elevation
3 100. Now, as you can see in this view, module CA01 is
4 outlined here. Now, I'm going to have to do a little
5 bit of explaining. Unfortunately this view is not
6 perfect, but if you can imagine, you're seeing parts
7 of module CA01 here. The walls in question, the three
8 walls in question, are actually just below this
9 portion of CA01, so CA04 is still here, which we
10 discussed, and the three walls -- other three walls
11 being discussed are here, here, and here. And that is
12 seven and a half feet nominal thickness and nine feet
13 nominal thickness.

14 And, again, the request is to change the
15 concrete tolerance for those three walls from plus or
16 minus 1 inch to plus or minus 1-5/8 inches.

17 JUDGE SPRITZER: Just so I'm clear, you --
18 the three red lines you've drawn, that's not -- it's
19 not just that specific --

20 MS. RONNLUND: No, Your Honor. I'm sorry.

21 I --

22 JUDGE SPRITZER: -- point.

23 MS. RONNLUND: I'm shortcircuiting a little
24 bit. It would be the entire distance here between the
25 two modules.

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1 JUDGE SPRITZER: And those are all
2 surrounding the reactor vessel, which is right in the
3 center, I take it.

4 MS. RONNLUND: Yes.

5 JUDGE SPRITZER: Okay. And I take it the
6 purpose of those walls has something to do with, well,
7 first, radiation shielding, and also maintaining the
8 structure of the -- protecting the reactor vessel from
9 outside events.

10 MS. RONNLUND: Yes. These are seismic
category 1 structures. They are designed to protect
the vessel, the reactor from missiles, thermal
wavings, as well as seismic events.

14 JUDGE SPRITZER: So if one of those events
15 happened and the walls are sufficiently thick to
16 prevent whatever event we're concerned with, isn't
17 there then a potential for off-site consequences?

18 MS. RONNLUND: In this case, the walls are
19 sufficiently thick, so there is no potential for off-
20 site consequences. But in addition --

21 JUDGE SPRITZER: That sounds like a merits
22 argument to me, not really a standing argument.

23 MS. RONNLUND: In addition to that, Your
24 Honor, the real reason why there's no off-site
25 consequence is that the radiation and structural

1 functions that these walls serve are all inside
2 containment, and the off-site consequence alleged by
3 BREDL in this case is some sort of dose to the public.
4 And there is no analysis supporting that any such dose
5 is possible.

6 As you can see, you're below grade level
7 here. Any direct radiation would go through not only
8 these walls, but dead-end underground, so there's --
9 BREDL -- there's just simply no colorable dose path
10 from this area off site, and none of the components
11 that are addressed in this license amendment are
12 responsible for controlling gaseous effluents or
13 liquid effluents which would be the main source of
14 dose to the public.

15 JUDGE TRIKOUROS: Well, strictly speaking,
16 these are inside an open containment. Right?

17 MS. RONNLUND: Yes.

18 JUDGE TRIKOUROS: So there's an ample
19 pathway from those compartments directly up to the
20 rest of the containment and potentially leaking out
21 that way. Is that correct?

22 MS. RONNLUND: The pathway -- you're
23 correct. Any event of a gaseous release would go up,
24 but these walls do not control that release, so these
25 walls are not changing the gaseous pathway at all, so

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1 there's simply no effect on potential gaseous effluent
2 dose from this wall change at all.

3 JUDGE TRIKOUROS: I understand.

4 JUDGE SPRITZER: If, though, there is an
5 event, a seismic event or some other event that were
6 to in some way damage the reactor vessel leading to a
7 release from the vessel of radionuclides, there is a
8 pathway, if I understand Judge Trikouros's question
9 and your response, there is a pathway out of
10 containment if that happens. Isn't there, or am I
11 misunderstanding?

12 MS. RONNLUND: I think the issue is -- the
13 question here is what is the license amendment
14 changing and what effect does the license amendment
15 have. And in the amendment in question, it's only
16 requesting a change the identified four walls, and
17 those four walls do not control the gaseous effluent
18 pathway. So by changing these walls, the pathway is
19 unchanged from the pathway that exists prior to the
20 license amendment.

21 JUDGE SPRITZER: Well, but what if there's
22 an increased -- again, I'm talking purely
23 hypothetically. I'm not suggesting this is a likely
24 outcome. But what if there is an increased
25 probability of a release from the reactor vessel? Are

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1 you saying, as long as the pathway isn't changed by
2 this amendment, that's insufficient for standing?

3 MS. RONNLUND: I think, if I understand
4 your question, Your Honor, the first piece is there's
5 an increased potential for some sort of accident or
6 event. There's just -- these walls do not affect
7 that. So the walls don't affect the potential for any
8 event, and they don't affect the gaseous pathway, so
9 there's -- in neither situation is there an effect on
10 dose from gaseous release, either from the event
11 itself or from the pathway. I don't know if that
12 answered your question.

13 JUDGE SPRITZER: I think I understand what
14 you're saying. Let me ask -- well, go ahead. I'm
15 sorry. We've interrupted you with some questions, so
16 why don't you proceed with what you were going to tell
17 us.

18 MS. RONNLUND: Sure. I think -- let me
19 just -- again, the central point for standing in this
20 case, as we have previously discussed, is that a
21 petitioner is obligated to show a causation pathway to
22 a distinct new threat or harm. The siting of the
23 Vogtle reactor is not at issue here. The issue is the
24 distinct -- if there is any distinct new threat or
25 harm from this license amendment, and as demonstrated

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1 here, the change in the thickness tolerance to these
2 walls simply do not raise any new distinct harm or
3 threat. Thank you.

4 JUDGE SPRITZER: All right. Let's hear
5 from -- oh, do you have a question?

6 JUDGE JACKSON: Ms. Ronnlund, has the NRC
7 staff and the NRC been consistent in its application
8 of basically the criterion you spoke of, that there
9 has to be a significant pathway, new pathway or new
10 hazard identified? The reason I'm asking goes back to
11 the proximity argument in the staff's answer. I
12 believe that it used the word "amendments that are
13 significant," and gave an example of an expansion of
14 a spent fuel storage pool or something like that, so
15 something where there is a clear difference. Have
16 there been a number of exceptions like that to the
17 proximity -- applying the proximity standing for
18 amendments or --

19 MS. RONNLUND: I don't know it's an
20 exception to the proximity requirement, but in order
21 to apply the proximity presumption shortcut, if you
22 will, the consistent rule is an obvious potential for
23 off-site consequences. I think there are -- have been
24 two ways that that can be reached. One, for example,
25 in a power uprate, or in a significant spent fuel

1 expansion, where you have a change to the radioactive
2 elements. You have a fundamental change to the
3 potential of radioactive release or accident. And
4 that is not applicable here at all.

5 And then the second way would be where
6 that is not the case, that something is being done, a
7 license amendment creates a new pathway for a new dose
8 of some kind. And again here, as we've shown, there's
9 simply no colorable argument for that to occur in this
10 case. I think it's two ways to get to that potential
11 for off-site consequence, but in any case, in order to
12 apply the presumption, you have to have the potential
13 for off-site consequence, obvious potential.

14 JUDGE JACKSON: Thank you.

15 JUDGE SPRITZER: Let me just -- this is
16 from the license amendment request. This is your
17 client's document. I guess it's Enclosure 1, request
18 for license amendment regarding CA04 structural
19 module. It's Enclosure 1 to the letter requesting the
20 amendment, that's dated September 18, 2015. And on
21 page 3 of 13, this is the third paragraph from the
22 bottom.

23 It says, "The nuclear island
24 structures" -- and I take it that's including the
25 walls that you've been talking about.

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1 MS. RONNLUND: Yes.

2 JUDGE SPRITZER: -- "provide protection
3 for the safety-related equipment from the consequences
4 of either a postulated internal or external event.
5 Nuclear island structures are designed to withstand
6 the effects of natural phenomena such as hurricanes,
7 floods, tornados, tsunamis, and earthquakes without
8 loss of capability to perform safety functions."

9 I would -- you know, as a nonexpert in
10 this field, I would infer that if these structures are
11 insufficient to provide the protection for safety-
12 related equipment, there's got to be some -- it may be
13 small, but some effect on the operation of the reactor
14 and ultimately some potential for off-site
15 consequences. It just seems to me a matter of basic
16 logic. So tell me what I'm missing.

17 MS. RONNLUND: In the event the walls
18 were, in fact, structurally inadequate, there could
19 potentially be a consequence, but --

20 JUDGE SPRITZER: Off-site consequence, I
21 would think. Right?

22 MS. RONNLUND: If the wall structurally
23 weren't adequate, there potentially could be an off-
24 site consequence. But in this case, that has not even
25 been alleged.

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1 JUDGE SPRITZER: Okay. I think our --
2 where we may differ is I fully understand the point
3 that just showing a -- what's the term? -- obvious
4 potential for off-site consequences does not establish
5 a claim on the merits. I guess where maybe we're
6 differing is you seem to see that as also filtering
7 back into the standing inquiry. I'm not so sure of
8 that, but we'll have to look at the case law on that.
9 Is there any case law you think is particularly
10 relevant on that issue?

11 MS. RONNLUND: On the issue of --

12 JUDGE SPRITZER: How far into the merits
13 you go to decide whether there's standing or not.

14 MS. RONNLUND: Well, certainly Commission
15 case law is clear that a bare assertion or a
16 speculative claim of off-site consequences without
17 support is not enough to meet the standing
18 requirements to apply the proximity presumption. For
19 example, in the Zion case from 1998, licensing board
20 found that there was not a causal link between the
21 asserted harm and the proposed license amendment, and
22 rejected the standing argument in that case, and that
23 case was affirmed by the Commission.

24 JUDGE SPRITZER: Which case was that?

25 MS. RONNLUND: That's the Zion case, LBP

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1 98-27.

2 JUDGE SPRITZER: Do you have an NRC
3 issuances cite for that?

4 MS. RONNLUND: I do not in front of me.
5 I can get that to you in a moment.

6 JUDGE SPRITZER: That's fine.

7 MS. RONNLUND: But that was also affirmed
8 by the Commission in 1999.

9 JUDGE SPRITZER: Okay. Very good. Thank
10 you. Let's hear from the staff on this, if you have
11 anything to add, that is.

12 MS. MIKULA: Good morning.

13 JUDGE SPRITZER: Good morning.

14 MS. MIKULA: The Petitioner must meet
15 applicable --

16 JUDGE SPRITZER: Could you just state your
17 name, so we --

18 MS. MIKULA: Oh, I'm sorry. Olivia
19 Mikula.

20 JUDGE SPRITZER: Okay.

21 MS. MIKULA: The Petitioners must meet
22 applicable standing requirements and submit at least
23 one admissible contention pursuant to the regulations
24 to be granted a hearing. The Petitioner has failed to
25 meet the burden of establishing standing in this

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1 proceeding.

2 BREDL's petition relies solely on the
3 proximity presumption to meet standing requirements.
4 The proximity presumption has been recognized by the
5 Commission only in cases where a clear potential for
6 off-site consequences exists. The Petitioner has the
7 burden to demonstrate that the type of action at issue
8 justifies a presumption that the licensing action
9 could plausibly lead to the off-site release of
10 radioactive fission products. The Petitioner has not
11 done so here.

12 Where a clear potential for off-site
13 consequences is not present, the Petitioner must
14 demonstrate traditional judicial concepts of standing.
15 Petitioner fails here to identify a concrete
16 particularized injury or a plausible causal connection
17 between the alleged injury and the license amendment
18 at issue in this case. It is the NRC staff's position
19 that the Petitioner does not meet applicable standing
20 requirements necessary to be granted a hearing. Thank
21 you.

22 JUDGE JACKSON: Can I ask you basically
23 the same question about the NRC and staff approach on
24 applying the proximity argument to amendment cases
25 versus, say, a combined license case. In your view,

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1 has the NRC been consistent in its application of the
2 notion that amendments have to show some clear new
3 path or some significant off-site potential for
4 release? And, again, if you could speak to fuel pool
5 versus this particular amendment, I'd appreciate it.

6 MS. MIKULA: Yes, Your Honor. So other
7 cases that we've seen implicating the proximity
8 presumption in regards to license amendments
9 specifically -- and this includes the power uprate
10 case cited by Petitioner and spent fuel cases -- those
11 involved an increase in radioactivity potential or a
12 change in a radioactive component or source. And such
13 license amendments do have a clear potential for off-
14 site consequences.

15 And here Petitioner has not shown a clear
16 potential for off-site consequences in regards to this
17 license amendment specifically or even cases that
18 would involve a similar license amendment allowing the
19 use of the proximity presumption to grant standing.

20 JUDGE JACKSON: So this -- in your view,
21 this approach has been consistently applied over time.

22 MS. MIKULA: From what I've seen and from
23 the cases that were cited in the pleadings, Your
24 Honor.

25 JUDGE JACKSON: Thank you.

1 JUDGE SPRITZER: What about cases that
2 weren't cited in the pleadings?

3 MS. MIKULA: Your Honor, the staff
4 recognizes that the standing here is determinative on
5 the pleadings in the case, and so the staff has
6 focused on the pleadings in the cases cited within the
7 pleadings. Specifically, the Petitioner's cases have
8 not demonstrated that clear potential for off-site
9 consequences which is necessary in order to incite the
10 proximity presumption.

11 JUDGE SPRITZER: Okay. Well, I'm not sure
12 if this case was cited in the pleadings or not, but
13 you may or may not be familiar with it, but Cleveland
14 Electric Illuminating Company case, this is 38 NRC 87.
15 It's CLI 93-21, decided by the Commission in 1993.
16 And the license amendment at issue there really didn't
17 seem to have any effect -- it didn't directly affect
18 the physical plant at all.

19 It transferred the reactor vessel material
20 surveillance withdrawal schedule from the plant's
21 technical specifications to the facility's updated
22 safety analysis report. And apparently the effect of
23 that was if there ever were to be an amendment
24 affecting the vessel material surveillance schedule,
25 no one would be able to challenge it, because it would

1 no longer require a license amendment. And the
2 Commission said that had the potential for off-site
3 consequences, even though there was no physical change
4 at all.

5 I don't know. You may not have had a
6 chance to look at this case, so maybe it's a little
7 unfair to ask you about that here. Maybe, if you do
8 have the opportunity during a break, perhaps you and
9 the Licensee's counsel would like to look at that.
10 I'd be interested in your views on that case.

11 MS. MIKULA: Sure, Your Honor. I'm not
12 familiar with that case specifically, but what I can
13 say in the balance of this case is that the Petitioner
14 has the burden to demonstrate standing, and here
15 Petitioner has relied on the proximity presumption,
16 which doesn't automatically apply to license
17 amendments, as we've seen in the case law.

18 And so without establishing standing -- or
19 without establishing that the proximity presumption
20 necessarily applies to this license amendment at
21 issue, Petitioners have failed to demonstrate standing
22 here.

23 JUDGE SPRITZER: Is it specifically the
24 amount or the dimensions of the wall change? I mean,
25 suppose we were talking about a much more significant

1 change in these walls, which I take it is acknowledged
2 are safety-related structures. I mean, they're right
3 in the nuclear island surrounding the reactor vessel,
4 as this diagram shows. Suppose we were talking about
5 a six-inch or a one-foot change. Would that be
6 sufficient? Or is it just the dimensions, in other
7 words? Or are you saying, as a category, this entire
8 category of license amendments is not sufficient to
9 bring the presumption into play?

10 MS. MIKULA: Your Honor, I am saying that
11 in order to implicate the proximity presumption in
12 license amendment cases, in which the NRC has not
13 recognized a previous application of the proximity
14 presumption, that the Petitioner has the burden to
15 demonstrate that the proximity presumption applies.
16 And here, the Petitioners have not met that burden.

17 JUDGE SPRITZER: Let me ask you about one
18 other claim they make. They say that various
19 information -- well, let me give you some specific
20 examples, rather than characterizing it generally. I
21 think it's on page -- and this is in the contention
22 admissibility part of their pleading on page 8. But
23 they talk about various -- they say that Southern
24 didn't specify, in talking about the margins that will
25 exist if the license amendment is granted, that the

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1 license amendment request does not specify what the
2 margins were with the original tolerances.

15 MS. MIKULA: No, Your Honor. So the
16 application here does not cite to nonpublicly
17 available information as the basis for any of its
18 conclusions. And the application makes a number of
19 statements and conclusions about the wall tolerances
20 and the safety ramifications of changing those
21 tolerances.

22 The Petitioner does not contradict these
23 justifications or conclusions, which were based on
24 publicly available information, and Petitioner fails
25 to demonstrate in this post hoc argument what material

1 information is missing or how additional information
2 will raise a genuine dispute with the application.

3 JUDGE SPRITZER: Were the original margins
4 publicly available?

5 MS. MIKULA: The original margins here are
6 immaterial, Your Honor, and we'll get -- that is
7 something that would lead us into contention 1, but
8 just as a preliminary matter, the margin of safety
9 calculation does not include the original margins.
10 They are not necessary to making that safety
11 determination.

12 JUDGE SPRITZER: But was that information
13 publicly available or not?

14 MS. MIKULA: I'm not sure, Your Honor.

15 JUDGE SPRITZER: All right. Okay.
16 Proceed, if you have anything.

17 MS. MIKULA: And just on that point, the
18 Petitioner must identify why this information is
19 material to the safety findings that the staff must
20 make, and they have not done that here.

21 JUDGE TRIKOUROS: So in terms of standing
22 regarding the potential for an increase in -- or an
23 increase in the potential for radiological release,
24 these walls, I think it's clear in the record, are
25 very, very important structural walls. They surround

the reactor itself. They surround the steam generators, and they connect the -- and they separate the reactors from the reactor coolant drain tank. Therefore, passing through these walls are very important piping, very important instrument information, electrical wires that are critical, very important walls. There's no question here. I think the record is clear on that.

The design of these walls has been degraded slightly. The NRC and the Applicant have evaluated the degradation and determined that it is basically insignificant. The Petitioner is arguing that that is not the case. But there is no doubt that if there were a failure of these walls, given a seismic event or given an internal high energy line break event, or any number of loads that they're designed to accommodate -- and I might add, loads and load combinations that they're designed to accommodate -- there would be an increased release of radiation clearly.

21 So it hinges on whether or not it's really
22 a significant change to the design that would result
23 in that increased potential release or not. Is that
24 a correct summary of the situation?

25 MS. MIKULA: Your Honor, here the staff is

1 focused on the procedural elements of standing and the
2 Petitioner's burden to demonstrate that standing. I
3 understand your discussion of the importance of these
4 walls, and again, this gets a little bit into
5 contention 1. But the application itself discusses
6 the margin of safety and makes a conclusion that the
7 margin of safety calculation here determines that
8 those safety functions are still being met.

9 Petitioners must demonstrate that the
10 license amendment at issue here will pose a clear
11 potential for off-site consequences in regards to
12 standing, and they have not done so.

13 JUDGE TRIKOUROS: One might argue, as we
14 will in contention 1, whether or not the design has
15 been degraded to an extent that's problematic or not.

16 MS. MIKULA: Right.

17 JUDGE TRIKOUROS: But with respect to just
18 the standing issue --

19 MS. MIKULA: Okay.

20 JUDGE TRIKOUROS: -- you know, without
21 getting into the merits of the issues in contention 1,
22 this wall, these walls, if they were to fail, would
23 result in an increase in radioactive release,
24 primarily because they would degrade the reactor's
25 ability in terms of handling accidents.

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For example, if a seismic event were to sheer off steam generator hot legs -- I'm not sure hot legs pass through these walls, but probably cold legs do -- you know, that would certainly be something that's beyond the design basis of this plant. So just from the standing perspective, is that -- would that be a true statement?

8 MS. MIKULA: Your Honor, if we are looking
9 only at standing here, the Petitioners in their reply
10 and in their filings have noted that they believe
11 only -- that the proximity presumption applies
12 automatically here, and so if we're talking only about
13 standing, without getting into the merits or any of
14 the contentions, Petitioners have the burden of
15 establishing that standing is in this case. And,
16 again, they have not done so.

I believe the Zion case also mentioned by
the Applicant -- just a claim that there is an
increased risk of radiological exposure, without
connection or explanation as to how that lines up with
the license amendment at issue in this case, is
insufficient to confer standing.

23 JUDGE TRIKOUROS: Okay.

24 JUDGE SPRITZER: All right. I think we've
25 pretty much beaten this issue to death. Mr. Zeller,

1 I don't think you reserved any time for rebuttal on
2 standing, but we'll give you a minute if you have
3 anything further to add on that.

4 MR. ZELLER: Thank you, Judge Spritzer.
5 I just would add one thing in terms of the argument or
6 the presumption that this standing is based on a post
7 hoc argument. In working in the community of Shell
8 Bluff, in Burke County, Richmond County where we are
9 here in Augusta, and the gathering of declarations for
10 standing, the 50-mile limit is one that we have used
11 certainly in the past, and it's difficult for
12 individuals, private citizens, in fact, to know how
13 far they are from a nuclear power plant, so the 50-
14 mile limit is usually a safe amount.

15 We have in the past tried to delineate
16 them in detail, but that proved to be unsatisfactory,
17 so the 50-mile number in the declarations was, you
18 know, designed to allow people to honestly sign a
19 document which says, Under penalty of perjury. You
20 notice one of the declarants put, I live in and around
21 the following communities, reflecting the nature of
22 her unstable family situation. And, of course, that
23 made it 62 that had a definite address.

24 So -- but you understand, some people
25 won't sign a declaration like that, that says, Under

penalty of perjury, unless they're absolutely dead
certain that every letter in that is correct. And 50
miles is an easy judgment case to make. If you start
talking about 15 miles, ten miles or even seven miles,
people really don't have an idea. They may drive to
the plant, and it'll take ten miles, but that could
turn out to be five miles.

8 So I just wanted to just kind of dispel
9 the notion that this was all post hoc.

10 JUDGE SPRITZER: All right. Thank you.
11 We will move on to contention 1. We'll move on and
12 hear contention 1. Ms. Ronnlund, you can, when you
13 have a moment, I guess, during the break, if you want
14 to give me that citation you mentioned, that'd be
15 fine.

Also, since I brought up the Cleveland
Illuminating case, if you want to look at that briefly
over the break, if either of the NRC staff or Licensee
counsel want to say anything on that case, since I
don't think it's been cited in the briefs, we'll give
you that opportunity.

22 But let's move on and hear on contention
23 1. Mr. Zeller. Do you want to reserve any time for
24 rebuttal?

25 MR. ZELLER: Yes. I would like to reserve

1 || five minutes for rebuttal, please.

2 JUDGE SPRITZER: All right.

3 MR. ZELLER: Contention 1 is that the
4 license amendment request fails to meet industry
5 standards. Under 10 CFR 50.59, the Licensee must get
6 an amendment approval from the Commission, and it must
7 show that the change would not cause fission product
8 barriers to be exceeded, altered or departure from the
9 method of evaluation used to establish those safety
10 factors.

11 Experts in this field have described this
12 as kind of a Mother, may I?, and I'm not disputing
13 50.59 here like a generic rule. But this is a
14 particular case here where, I believe, that the fact
15 that the Nuclear Regulatory Commission has done a
16 review of the requests for license amendment under
17 50.59 and has found dozens of cases which were very
18 problematic. I think this is a Pandora's box, 50.59,
19 that is misapplied in this case in terms of the change
20 in the tolerances for the concrete construction of the
21 central elements in the power plant.

If 50.59, I believe, would properly be applied to the color of paint, for example, of part of the building or something else which was arguably very inconsequential or had no possible consequences. In

1 this case, there are potentially consequences which,
2 I think, are -- eliminate this license amendment
3 request from approval.

4 In our briefs, we did point to the Nuclear
5 Energy Standards Coordination Collaborative and their
6 final report on radiation impacts on internal attack
7 and concrete durability, which talked about the
8 possibility for radiation over short time scales,
9 regardless of element thickness, to cause destruction
10 in the concrete elements.

11 The collaborative report adds that an
12 accurate measurement and inspection on the nuclear
13 plant construction site and proper standards are
14 essential. In this case, we're not following the
15 standard, which was outlined by the Nuclear Energy
16 Standards Coordination Collaborative or the American
17 Concrete Institute standards, which are a part of the
18 licensing basis, 117 and 349.

19 In the license amendment request,
20 Enclosure 2 at 7 and 8, it says that, "Licensee
21 requested departure from elements in the AP-1000
22 design control document. The Licensee has determined
23 that a proposed departure would require a permanent
24 exemption from the requirements of 10 CFR 52, Appendix
25 D, with respect to installation of facility components

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1 located within the restricted area, or which changes
2 inspection or surveillance requirement. However, the
3 licensee evaluation has determined that the proposed
4 exemption meets and eligibility criteria for
5 categorical exclusion. Therefore, an environmental
6 impact statement or environmental assessment is not
7 required."

8 We believe this is incorrect. The
9 Licensee's proposed change do not qualify for
10 categorical exclusion. A critical issue with regard
11 to the requested concrete wall thickness tolerance
12 changes involves hydrogen control inside the
13 containment following severe accident or even design
14 basis accident. UFSAR Section 6.2.4 describes the
15 containment, hydrogen controlled system.

16 The second bullet on page 6.2-34 states
17 that, "The function of the system is hydrogen control
18 during and following a degraded core or core melt
19 scenario, provided by hydrogen igniters." That's all
20 in UFSAR. In a core melt scenario, the molten core
21 can burn through the reactor pressure vessel and slump
22 into the concrete containment floor. Hydrogen is
23 generated from a chemical reaction involving
24 overheated fuel rods. Hydrogen can also be generated
25 by a chemical reaction between the molten core or the

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1 core M and concrete.

2 The hydrogen igniters have a role to play
3 in core melt scenarios. Molten core debris can
4 contact concrete surfaces inside the containment in
5 core melt scenarios. The molten core concrete contact
6 can generate hydrogen. The proposed concrete wall
7 thickness changes could result in a more concrete
8 being inside the containment than previously analyzed.
9 It could be less; it could be more. We're talking
10 about tolerances being expanded from 1 inch to 1-5/8
11 inches.

12 Thicker walls mean more concrete material
13 inside the containment than previously considered.
14 Thicker walls also mean less air space inside the
15 containment than previously considered, for example,
16 spaces for cables and other materials to pass between
17 the concrete walls. Could more hydrogen be generated
18 during a core melt scenario than assumed in the
19 studies concluding that hydrogen igniters will fulfill
20 their safety function during a core melt scenario?

21 The potential for greater hydrogen
22 inventories in smaller containment air space could
23 result in higher hydrogen concentrations inside the
24 containment during core melt scenarios. Will the
25 hydrogen igniters still control hydrogen

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1 concentrations within the safe range? We do believe
2 that there is a need for an environmental impact
3 statement in addition to the safety factors which are
4 involved.

5 JUDGE SPRITZER: Well, wait a minute.
6 We've gotten a little bit far from contention 1.
7 Contention 1 -- I know you have an argument about the
8 categorical exclusion in regard to contention 3, but
9 contention 1 is focused on the adequacy of the
10 justification for the license amendment, so can we
11 focus on that part, and we'll give you a chance to
12 talk about contention 3 later.

13 But did I overlook something? Are you
14 saying that contention 1 includes a claim for
15 environmental impact statement? If it did, I
16 completely missed that.

17 MR. ZELLER: Well, I apologize if I've
18 elided things together, but within the license
19 amendment request meeting industry standards, we think
20 that the American Concrete Institute requirements ACI
21 349 and 117 are the standards, and by introducing
22 uncertainty, the license amendment has created a
23 situation which is unknown, and in fact, at this
24 point, perhaps unknowable because we don't know, in
25 fact, how much more concrete or how little concrete

would be added to these walls.

With less concrete, you have more consequences for radiation impacts from the reactor itself. With more concrete, you have the possibility of more hydrogen generated, and therefore, a serious reactor accident, based on the inability of the hydrogen igniters to reduce or to reduce the pressure on the containment structure. So what we are talking about is the failure of the Licensee to demonstrate that this is worthy of a categorical exclusion, which they have claimed.

12 JUDGE TRIKOUROS: Okay. With respect to
13 contention 1 specifically, in an overview that you
14 provide in your pleading, you use terminology like,
15 "Based on our review, the license amendment request
16 has not been fully evaluated by the NRC and is not
17 justified by the information presented by the
18 company."

19 || MR. ZELLER: Correct.

20 JUDGE TRIKOUROS: What did you mean by
21 that specifically? I mean, was there -- your pleading
22 doesn't really support that statement in any strong
23 way. Was there something there that I missed or, you
24 know, what's the basis for that statement?

25 MR. ZELLER: Well, Judge Trikouros, the

1 categorical exclusion is based on 10 CFR 50.92,
2 significant hazards. There are three standards there,
3 4.3.1, 4.3.2, and 4.3.3, which are increased
4 consequences, a new kind of accident, or reduced
5 safety margins. The hydrogen consequences that I just
6 outlined clearly go to increased consequences. The
7 increased radiation exposure goes to reduced safety.

8 So the conclusion that this meets a --
9 that a categorical exclusion may be granted under 10
10 CFR 51.22 is -- does not exist. There is no analysis
11 sufficient to show that a categorical exclusion may be
12 granted in this case, to put it in most plainly. The
13 things that we have raised point to insufficient
14 arguments, insufficient justifications in the license
15 amendment request insofar as we can determine from the
16 materials in our possession.

17 JUDGE SPRITZER: I mean, in terms of what
18 was actually in contention 1, which I'm looking it
19 over and I haven't found any mention in it of the
20 categorical exclusion issue or any NEPA. I
21 interpreted it as a -- what we call a safety
22 contention, rather than an environmental contention.

23 One of your arguments was -- I think the
24 staff characterized it as your primary argument -- was
25 this business about the margins, that we don't know --

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1 all they told us is what the margin of safety is after
2 the amendment is granted, but we don't know what it
3 was before. Is that still your argument, at least
4 part of your argument in contention 1?

5 MR. ZELLER: Yes. I have not repeated
6 what is already in the record, Your Honor.

7 JUDGE SPRITZER: Okay. I mean, can you
8 explain to me -- let's assume you were provided with
9 that information. How would it affect the staff's
10 authority to grant the license amendment? How could
11 that possibly make a difference in terms of whether
12 the license amendment should or should not be granted?

13 MR. ZELLER: If a license amendment were
14 to be justified, it would be done through the normal
15 procedures, not under the categorical exclusion, and
16 perhaps with a safety -- with the requirement of a
17 safety analysis and, I believe, an environmental
18 impact statement.

19 The preliminary -- the PAR -- amendment
20 request has short-circuited the public's ability to
21 have the time to review, to request, because it's a
22 done deal. It's a fait accompli. And so in a way,
23 we're kind of arguing here at the margins when
24 something has already happened, which I think is part
25 of the problem. So we have a problem with the PAR,

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1 leading to the -- proceeding from the LAR, and the
2 public is left out.

3 We do believe that if there was
4 justification for this, then the Licensee should be
5 required to show that, that there would be no off-site
6 consequences and that the addition of concrete or the
7 reduction in concrete would not have some of the
8 consequences which our experts have identified, and
9 which we would hope to elaborate further in this
10 proceeding.

11 JUDGE SPRITZER: When you say, your
12 experts, I don't recall having seen an expert
13 affidavit or declaration filed in this case on your
14 behalf. Did I overlook something?

15 MR. ZELLER: Judge Spritzer, you have put
16 your finger on a very difficult point for us. We're
17 just a few days past the anniversary of Fukushima.
18 There was also a earthquake in Virginia several years
19 ago. During those proceedings, we identified experts
20 in terms of geology and seismic activity who were
21 perfectly willing to let us use their information, but
22 for some reason, did not want to appear in such a
23 proceeding as we're holding here today.

24 Now, I'm not sure why that is, but that
25 was their judgment, to not sign a declaration, and

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1 that has been the case oftentimes. Therefore, we rely
2 on other areas of procedure, which allow us to cite
3 expert documents, things in the public record, things
4 in technical journals and draw these conclusions.

5 JUDGE SPRITZER: All right. Thank you.
6 I guess we'll hear from the Licensee next.

7 MS. RONNLUND: Your Honor, before I begin,
8 the citation to the Zion case, the -- it's a
9 Commonwealth Edison LBP 98-27, and that's 48 NRC 271,
10 and the Commission case affirming that is COI 99-04,
11 and that's 49 NRC 185.

12 JUDGE SPRITZER: Great. Thank you.

MS. RONNLUND: The question being addressed here today is the admissibility of contention 1, which is whether contention 1 as presented by Petitioner meets the requirements in 10 CFR 2.309(f). Before I discuss those requirements in a little bit more detail, I'd like to take a step back and discuss the overall regulatory structure that controls this license amendment.

21 A moment ago, Mr. Zeller spent several
22 minutes discussing Section 50.59. This license
23 amendment was actually a change to certified
24 information within the scope of the design
25 certification, and is controlled by 52.98 and the

1 requirements in Part 52, Appendix D. 50.59 does not
2 actually apply to this change.

3 In addition, in this case, the Licensee
4 used the requirements in Part 52 and determined that
5 a license amendment was required, and as such, the
6 Licensee submitted a license amendment request to the
7 NRC, which is what's before us today. There is no
8 issue regarding 50.59 before this board, and no
9 issue -- and the issues raised by Mr. Zeller are not
10 relevant to this proceeding.

11 In fact, in the Sequoyah case, which is 56
12 NRC 15 -- that's from 2002 -- it was specifically held
13 by the licensing board that 50.59 is irrelevant in
14 cases where the licensee has submitted a license
15 amendment request, so that issue is simply not
16 relevant to contention 1.

17 Moving on to the contention admissibility
18 requirements that are at issue here, 2.309(f) requires
19 several specific showings in order for a contention to
20 be admissible, and contention 1 fails to meet all of
21 those showings. Specifically, this challenge is
22 outside the scope of the proceeding today.

23 As Mr. Zeller stated and has stated in
24 BREDL's petition, one of the main challenges in
25 contention 1 is to the fact that this license

1 amendment requests a deviation from industry code.
2 The NRC staff's ability to approve deviations from
3 code and deviations from the licensing basis in
4 general is a regulatory process that's been on the
5 books for years, and there is no question that the NRC
6 staff has the authority, upon a properly submitted
7 license amendment request, to review such a deviation
8 and approve it.

9 Mr. Zeller's general challenge to the
10 deviation from industry code is not within the scope
11 of this license amendment proceeding. In addition,
12 BREDL's petition has failed to offer any factual or
13 expert support for contention 1. I mean, earlier
14 today, questions were asked about the walls involved
15 in this license amendment and their structural
16 function. To be clear, the walls involved -- the
17 concrete walls involved here are seismic category 1
18 structures, and they do have design functions that
19 they are required to meet, safety-related design
20 functions.

21 When the Licensee evaluated the deviations
22 request and the license amendment request, the
23 Licensee determined that after the requested tolerance
24 change, the walls continued to meet all of those
25 design functions. The main assessment done was in

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1 accordance with ACI 349, and the license amendment
2 concluded and showed that after the change in
3 tolerance, the walls continued to meet the ACI 349
4 requirements, and thus would meet their safety
5 function.

6 BREDL has not challenged any of the
7 technical information concluding that the walls meet
8 their safety function and continue to be safe. The
9 only technically related issue in contention 1 at all
10 regarded the margin. The margins addressed in the
11 license amendment request show that in terms of
12 vertical, horizontal, and sheer reinforcement, these
13 walls are well above the ACI code requirements, and
14 there is no material question regarding these margins.

15 The question of what the margins were
16 prior to this change are not relevant to the
17 assessment the staff must make in order to grant this
18 license amendment, which is whether or not the walls
19 continue to meet their safety function, which the
20 license amendment has demonstrated that they do.

21 Mr. --

22 JUDGE SPRITZER: Is -- excuse me. Go
23 ahead.

24 JUDGE TRIKOUROS: Yes. The license
25 amendment request performed a calculation of, I guess

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1 it was, reinforcement against the code requirements.
2 They came up with three different reinforcements. I
3 think it's basically vertical, horizontal, and sheer,
4 and provided a percentage of design margin. The
5 actual numbers I don't remember offhand, but they were
6 on the order of 50 percent.

7 The original design of the plant also
8 met -- specifically met the ACI standards with the
9 proper tolerances allowed by the standards, but I
10 presume that that was not all that was done in the
11 original design of the plant. In other words, there
12 were numerous FSAR sections that talk about loads and
13 load combinations and seismic -- including seismic,
14 and those were formally evaluated, even though the
15 standards were met.

16 So just saying the standards were met was
17 not sufficient to license this plant in the beginning.
18 There were many, many analyses that had to be done.
19 Now the statement is being made that the standards are
20 still being met, but in a lesser way than the original
21 design, and I presume that, because even though the
22 original design margins were not provided as the
23 Petitioner points out. It's still stated in the LAR
24 that the code requirements are met, but no other
25 analysis is provided.

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1 Is it assumed by the NRC basically and by
2 the Applicant that as long as I can say that I meet
3 the code requirements, that I need to do nothing more
4 and I can just make statements that the design basis
5 functions are all met? I've got more questions along
6 those lines, but just as a general question, is that
7 a correct statement?

8 MS. RONNLUND: No. I don't think that it
9 is correct to say it's an assumption. When the
10 deviation that is the subject of the license amendment
11 request is identified -- I think this is shown in the
12 license amendment -- an analysis is done to determine
13 what that deviation might impact in terms of the
14 original analysis. So, for example, in this case,
15 there's no impact to the tornado missile load that
16 would be an input into the code.

23 So it's not an assumption. It is the
24 assessment of what the impacts are from the deviation,
25 and in this case, the main impact was that it was a

1 tolerance change that could impact the calculation of
2 reinforcement under ACI 349, and so that assessment
3 was performed.

4 JUDGE TRIKOUROS: Now, I can understand
5 that if, let's say, that the original design analysis
6 made the assumption that the wall just met the code
7 requirements, with no margin whatsoever, just met the
8 code requirements, and then all analyses were done
9 based on that assumption, and then I could see that
10 later on, one could say, Well, I have a 50 percent
11 design margin to the code; therefore, I'm fine.

12 But it leaves out that question that I
13 just basically asked. Was the original analysis done
14 with, let's say, zero margin to the code? If the
15 original analysis was done with 100 percent margin to
16 the code -- and, again, I'm trying to address the
17 questions asked by the Petitioner in contention 1 or
18 the issues raised by the Petitioner -- then one
19 couldn't say a priori that with a 50 percent design
20 margin allowance, I'm fine. Is that an incorrect
21 analysis, thought analysis on my part?

22 MS. RONNLUND: The -- compliance with the
23 ACI 349 code in this case provided that all of the
24 loadings and load combinations as you mentioned, I
25 think, a few minutes ago remain the same and unchanged

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1 by the license amendment would demonstrate compliance
2 with the design -- or continuing to meet the design
3 basis function of the walls standing alone.

4 I think what I was addressing is that
5 there is a larger analysis done when a deviation is
6 identified to determine if there were any other things
7 that would change, but in this case, I think the
8 answer to your question is, yes, based on the way that
9 the plant was designed, an analysis that the walls
10 continued to meet ACI 349 and that none of the loads
11 change does adequately demonstrate that they meet
12 their design basis functions.

13 JUDGE TRIKOUROS: Well, whether or not the
14 loads are changed is not an issue at least for me. I
15 mean, clearly the loads haven't changed. I mean, they
16 are design basis loads. They were defined early on,
17 and that was it.

18 The -- if I were to ask the specific
19 question, was the seismic analysis redone as part of
20 this LAR, what would be the answer to that question?

21 MS. RONNLUND: The seismic analysis in a
22 broad sense was not completely redone in support of
23 this license amendment request, but the compliance
24 with the ACI 349 code in terms of reinforcement,
25 sheer, those are how the Licensee demonstrates that it

1 will meet -- will be able to withstand seismic loads
2 in accordance with the design function, and because
3 that code is met in this case, additional seismic
4 analysis would not be required.

5 JUDGE TRIKOUROS: So really, it was
6 engineering judgment.

7 MS. RONNLUND: The Licensee -- the license
8 amendment request relied on analysis that showed
9 compliance with ACI 349, and in terms of the licensing
10 basis for the Vogtle plant, that compliance is how the
11 adequacy to support seismic loads is demonstrated. So
12 the analysis was -- the margin was actually
13 calculated.

14 JUDGE TRIKOUROS: Okay. So we're back to
15 the beginning of this discussion, and that is that it
16 is assumed that if you meet the ACI code requirements,
17 you don't need to redo any of these analyses, and
18 specifically with approximately 50 percent design
19 margin for the three -- the two directional and the
20 sheer reinforcement. Right?

21 MS. RONNLUND: I think the difficulty I'm
22 having is with the use of the word "assumed" there,
23 because there is an impacts analysis done as part to
24 ensure that that assumption is still -- that using ACI
25 349 would still work. In other words, it's not the

1 case, but if the license amendment did impact some
2 other aspect of the design such that use of ACI 349
3 alone would not continue to show seismic requirements
4 were met, that would be identified and addressed. But
5 the Licensee did not find that impact, and so the ACI
6 349 equation in this case is adequate to demonstrate.

7 But it's not a simple assumption. It's
8 based on the entirety of the licensing basis and how
9 the plant was designed, and that impacts analysis that
10 determined that the situation -- in this situation,
11 use of the ACI 349 would still support design basis
12 functions.

13 JUDGE TRIKOUROS: Well, I mean, none of --
14 there's no details like that in the LAR. I mean,
15 maybe the staff had RAIs -- I'm not sure -- regarding
16 all of this. I didn't see any. But, for example,
17 what if those code analyses showed that the
18 reinforcement had a design margin of 25 percent?
19 Would that be fine? Could the LAR have been just the
20 way it is? Change all the numbers that say 50-some-
21 odd percent to 25 percent. Would that have been
22 acceptable?

23 In other words, that's all that's in the
24 LAR. It basically says, We have a 50-odd percent
25 design margin, and therefore, we're fine. There's

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1 nothing else in the LAR that I could find. There were
2 no references in the LAR that I could find. In fact,
3 I don't think there are any references in the LAR,
4 period, even relative to the question here. So how
5 would I know that 25 percent design margin is adequate
6 or inadequate?

7 MS. RONNLUND: I'm not a structural
8 engineer, so I will not attempt to speak to at what
9 point the number might change the analysis. But what
10 I do think is important is to note that the license
11 amendment request is submitted in the context of the
12 larger license, so all the information that's already
13 in the UFSAR underlies the license amendment request.

14 And so the reliance on ACI 349 code for
15 purposes of showing the ability to withstand seismic
16 events, for example, is part of the licensing basis,
17 which has already been approved. And so that context
18 exists in the license as it stands, and the Licensee
19 determined that didn't change, and so the reliance on
20 ACI 349 was appropriate. And there's been no
21 challenge in this case, alleging that there is any
22 technical inadequacy in the wall.

23 JUDGE TRIKOUROS: Well, again, the
24 Petitioner specifically said, if there were an
25 original design margin of 250 percent, I think is the

number that's in the pleading, and that was reduced now to 50 percent, that would be an important consideration in terms of the degradation of the design of the functional capability of the walls.

We don't know if 250 percent was the original design. It would make sense for me as from an engineering point of view, I would do the analysis at zero percent design margin, and then therefore, any design margin gives me confidence. I wouldn't worry about any design margin, as long as it was greater than zero.

I don't know if that's what was done here,
and I also don't know if the original design margin
was 250 percent. And that's what the Petitioner is
raising. He's saying, You give me a number of 50
percent design margin. I don't know what that means
relative to the original design of the wall. If it's
less than the original design of the wall, then maybe
you should be looking at the seismic again, or maybe
you should be looking at something beyond just making
a statement that it's okay.

That's how I read the pleading.

23 JUDGE SPRITZER: She's asking if you have
24 a question.

MS. RONNLUND: Again, I think that the

1 issue is that the licensing basis commits to the ACI
2 349 code as the demonstration of adequacy, and in this
3 case, the margin, which is approximately 50 percent
4 for all three areas, was adequate well above that code
5 commitment that's in the licensing basis.

6 And the difference in the margin alone,
7 because the licensing basis relies on compliance with
8 ACI 349, is not a material issue. The margin shows
9 sufficient compliance to ACI 349, that is the
10 licensing basis commitment for design function, and
11 that's shown to be met, and there's been no showing by
12 the Petitioner that there's any question as to the
13 technical adequacy of the wall.

14 JUDGE TRIKOUROS: Okay. Well, again, I'll
15 raise the question that if you look at the FSAR and
16 using the sections that are part of this record, they
17 didn't stop in the design of this plant simply by
18 saying, We meet the ACI standards; therefore, we don't
19 need those 800 pages in the FSAR that go into detailed
20 analysis of hydrogen line breaks, seismic events,
21 seismic events combined with hydrogen line -- I mean,
22 enormous number of loads and load combinations.

23 There's a table, I think it is, 3.3.1, I
24 believe, that shows all the different loads and load
25 combinations and discusses which one of those

1 combinations apply to different events, and on and on.
2 None of that was redone or addressed specifically. I
3 mean, there wasn't even a statement that said, We meet
4 all of that, you know. I mean, I would -- if they
5 said that, I would believe that, because they're not
6 going to -- they better not lie about it.

7 So I just don't know how to get around
8 this issue that -- of design margin -- the adequacy of
9 the design margins provided, relative to the original.
10 You know, I'd just be repeating my question if I kept
11 going here.

12 JUDGE SPRITZER: Let me ask this. On the
13 question of these margins, I'm looking at page 7 of
14 13. This is Enclosure 1 to the license amendment
15 request. First full paragraph -- or first paragraph
16 on that page, it says, "As a result of the assessment,
17 it was found that the minimum margin for vertical
18 reinforcement is 47.9 percent; for horizontal
19 reinforcement, 54.8 percent; and for sheer, 61.3
20 percent."

21 Is there any minimum margin -- if I wanted
22 to find something in the Code of Federal Regulations
23 or the ACI or any other specific document, is there
24 something that's going to tell me, This margin -- and
25 I take it by margin, we mean, margin of safety -- this

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1 margin is sufficient; this one isn't. Or is it a
2 matter of engineering judgment?

3 MS. RONNLUND: There is no, that I'm aware
4 of -- I will check with our technical experts and
5 correct this if I misspeak, because I'm not the
6 technical expert. But there is no particular
7 numerical value that I'm aware of that would be a hard
8 line. Rather, in this situation, what controls is the
9 design as embodied in the entirety of the licensing
10 basis.

11 And so in this case, with the commitment
12 being to ACI 349 and margin -- this margin indicates
13 that the wall in question has reinforcement --
14 essentially approximately 50 percent reinforcement
15 than would be required to meet the code, since the
16 code commitment is the licensing basis commitment, in
17 this case, these margins are adequate because of the
18 context of the license. As far as a code value or
19 regulatory value for this particular margin number,
20 I'm not aware of one.

21 JUDGE TRIKOUROS: In your answer to the
22 petition on page 2, you state, "As explained in the
23 LAR, assuming the worst case scenario, the proposed
24 new tolerance results in the four CIS walls continuing
25 to meet the relevant seismic design requirements,

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1 including ACI 349-01, the requirements for
2 reinforcement" -- which is what Judge Spritzer just
3 read.

4 So that implies there was a worst case
5 scenario, but I couldn't find it. Perhaps you could
6 help me understand what the worst case scenario was.

7 MS. RONNLUND: The -- I believe the worst
8 case scenario that's referred to in that language is
9 referencing the language in the LAR, meaning that the
10 maximum -- or excuse me -- the minimum allowable
11 tolerance was used for the analysis, essentially as if
12 the minimum minus 1-5/8 inch was applied at all points
13 across the board. And that's the worst case that's
14 being referenced in that statement.

15 JUDGE TRIKOUROS: That's the scenario
16 that's referred to there?

17 MS. RONNLUND: Yes.

18 JUDGE TRIKOUROS: Okay. It's not a
19 scenario or an event, a sequence of events.

20 MS. RONNLUND: No, Your Honor. It's
21 referring to use of the minimum tolerance across the
22 board.

23 JUDGE TRIKOUROS: Okay.

24 JUDGE SPRITZER: All right. I think we've
25 exhausted this for purposes of the Licensee. Let's

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1 move on and hear from the NRC staff. And let's -- did
2 you have --

3 JUDGE TRIKOUROS: Well, perhaps after
4 everyone speaks, if we have any additional questions,
5 we could ask them in general.

6 JUDGE SPRITZER: Okay. I don't think
7 they'll -- I think they'll be happy to answer those
8 questions.

9 MS. MIKULA: The Petitioner's first
10 contention is inadmissible. Petitioner relies on
11 deviations from American Concrete Institute codes to
12 assert that the application is deficient. Petitioner
13 further asserts a deficiency because the application
14 did not include the original margins of safety,
15 without the departure proposed in the license
16 amendment.

17 ACI codes 349 and 117 are industry
18 standards, but are not required by NRC regulations.
19 Deviation from these codes alone does not create a
20 basis for a contention and does not raise a genuine
21 dispute with the application.

22 Further, the original margins of safety
23 are not required to determine whether sufficient
24 margin of safety exists after the departure proposed
25 by the license amendment. Therefore, the Petitioner

fails to demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action in this proceeding.

18 MS. MIKULA: The margin of safety
19 calculation is the ratio of the reinforcement required
20 by the design and the reinforcement required by the
21 code. That ratio is the basis for those margins.

22 JUDGE SPRITZER: Yes. I understand that.
23 I guess what I'm asking, though, is: I mean,
24 typically -- well, my experience is more with
25 environmental regulations, and often there is a

1 mandatory margin of safety. You don't just say,
2 anything greater than -- anything that meets the code
3 or above is necessarily sufficient.

4 I'm wondering if there's anything like
5 that here. I mean, do we have to have a given margin
6 of safety? Suppose the margin of safety were 1
7 percent. Would that have been adequate?

8 MS. MIKULA: One percent?

9 JUDGE SPRITZER: Yes. For any of these
10 that are mentioned on page 7, the minimum margin for
11 vertical reinforcement. Suppose it were 1 percent
12 instead of 47.9 percent. Would that have been
13 adequate?

14 MS. MIKULA: Yes, Your Honor. That would
15 be fine.

16 JUDGE SPRITZER: Anything above the
17 minimum is acceptable.

18 MS. MIKULA: Yes, Your Honor.

19 JUDGE SPRITZER: Then there isn't really
20 much requirement for a margin of safety, is there? I
21 mean --

22 MS. MIKULA: Well, Your Honor, if, for
23 example, the ratio -- that ratio were to exceed 1,
24 that would then be -- that would then exceed the code
25 requirement.

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1 JUDGE SPRITZER: No. I understand that.
2 But what I guess I'm asking is: Is there -- maybe
3 this is another way to put it. Is there a requirement
4 of a margin of safety at all? If you're saying it's
5 just enough to meet the standard, you don't have to
6 have any margin above the standard, then it seems to
7 me you're saying, there is no requirement of a margin
8 of safety. As long as you just meet the bare minimum
9 in the code, that's adequate. Maybe that is your
10 position. I just want to make sure I understand what
11 you're telling me.

12 MS. MIKULA: I would have to confer with
13 my colleagues to make sure that that statement is
14 completely accurate, and --

15 JUDGE SPRITZER: Okay. You're welcome to
16 do that. You can do that.

17 MS. MIKULA: If you don't mind, Your
18 Honor.

19 JUDGE SPRITZER: That's fine.

20 || (Pause.)

21 MS. MIKULA: Your Honor, to answer your
22 question, the codes here are robust in that they
23 already include safety factors that account for
24 uncertainties that exist in the structural design, so
25 as long as that ratio does not exceed 1, they are

1 within that margin of safety.

2 JUDGE SPRITZER: Okay.

3 MS. MIKULA: So as -- any range within
4 that, and that is still within the margin of safety.

5 JUDGE TRIKOUROS: Did you say, does not
6 exceed 1?

7 MS. MIKULA: It cannot exceed 1.

8 JUDGE TRIKOUROS: We're talking about the
9 design versus -- the ratio of design to code. Right?
10 So -- is it the other way around?

11 MS. MIKULA: Hold on, Your Honor.

12 JUDGE TRIKOUROS: I think in the pleading,
13 it actual said code over design, and so I didn't quite
14 understand that. I had a question on that, but I
15 thought --

16 MS. MIKULA: Sure.

17 JUDGE TRIKOUROS: -- you just answered it.

18 MS. MIKULA: If I may, Your Honor --

19 JUDGE TRIKOUROS: All right. Thank you.

20 (Pause.)

21 MS. MIKULA: I apologize, Your Honor. You
22 are correct. It is code over design, and so it's 1 or
23 less than 1.

24 JUDGE TRIKOUROS: Okay.

25 MS. MIKULA: Apologies for the confusion.

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JUDGE TRIKOUROS: That's fine. Okay.

The -- I'm looking at your answer at, I believe it is, page 12. There's a paragraph D on that page, discussion labeled D, capital D, and it talks about what you basically just said, that those codes are not part of NRC regulations. However, you state that instead the codes are made applicable to the Vogtle units through the Vogtle COLs, which are regulatory requirements governing the VEGP, the Vogtle plant design.

11 MS. MIKULA: Yes, Your Honor.

12 JUDGE TRIKOUROS: But which can be amended
13 in accordance with the process set forth in Part 50.90
14 and Part 52, Appendix D. So is there any question
15 that these codes are part of the licensing design
16 basis?

17 MS. MIKULA: They are required by the
18 design basis, but, again, as we've stated, deviations
19 or departures from that design basis are allowed under
20 these processes in the regulations.

21 JUDGE TRIKOUROS: I just want to make
22 sure, because you spent time saying they're not part
23 of the requirements, and then -- but you end by saying
24 that they are part of the requirements --

25 MS. MIKULA: They're not --

1 JUDGE TRIKOUROS: -- through the COLs.

2 MS. MIKULA: Yes, Your Honor. They are
3 not independently required by NRC regulations, outside
4 of the licensing basis for these plants.

5 JUDGE TRIKOUROS: Right. But there's no
6 question these plants have to meet those standards,
7 unless they file an amendment and prefer an argument
8 that makes sense.

9 MS. MIKULA: Yes, Your Honor. They must.

10 JUDGE TRIKOUROS: Okay.

11 JUDGE JACKSON: Ms. Mikula, I wanted to
12 just ask. What did the staff do to convince itself
13 that the company's analysis of these margins was done
14 correctly?

15 MS. MIKULA: Well, Your Honor, the staff's
16 safety evaluation here is outside the scope of this
17 license amendment proceeding. Any arguments that
18 Petitioners make in regards to the staff's safety
19 evaluation are, therefore, outside of the scope.
20 Petitioners must raise a dispute with the actual
21 application itself. And it is NRC staff's position
22 that they have not done so here.

23 JUDGE JACKSON: So the position is that,
24 say, the 53 percent safety margin number is not
25 something that the staff worried about determining

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whether it was properly calculated.

MS. MIKULA: Your Honor, that's -- the staff did an independent evaluation of the application, and ultimately because, as you know, the license amendment is issued, determined that it was in those safety margins and met the code in that regard. The only deviation here is from the code requirements for the actual wall tolerances. But, again, Your Honor, if the employee seeks to make an argument regarding the staff's evaluation, that's outside the scope of this proceeding.

12 JUDGE JACKSON: I was just trying to
13 understand --

14 MS. MIKULA: Sure.

15 JUDGE JACKSON: -- if the staff had done
16 some independent evaluating related to this amendment,
17 not to the original license.

18 MS. MIKULA: Your Honor, the staff
19 verifies and evaluates the information in the license
20 amendment application and makes its determination on
21 that basis.

22 JUDGE JACKSON: So they did look at this
23 evaluation and come to some independent judgment that
24 it was properly done?

25 MS. MIKULA: Yes, Your Honor. The staff

1 evaluates and verifies, based on the license
2 application.

3 JUDGE JACKSON: Okay. Thank you.

4 JUDGE TRIKOUROS: So I'm back to your
5 answer 12 again. There's more -- there's a lot to
6 that couple of paragraphs.

7 MS. MIKULA: Sure.

8 JUDGE TRIKOUROS: So you say that in
9 that -- on page 12 that, "Under this process, proposed
10 amendments are evaluated against the same NRC design
11 criteria used during review of the initial license."
12 You go on to say that, "The relevant question in this
13 proceeding is whether the 1-5/8-inch tolerance allows
14 SNC to satisfy the NRC's safety requirements
15 applicable to the walls, irrespective of the fact that
16 the proposed new tolerance exceeds the requirements in
17 the preexisting licensing basis and code requirements
18 incorporated therein."

19 So you might be worse off than the
20 original licensing basis, and that's acceptable, as
21 long as you provide justification for it. Is that how
22 I read that? Is that how I should read that?

23 MS. MIKULA: You know, Your Honor, I am a
24 little bit lost as to what -- are you looking at the
25 staff's answer or Southern's answer? Is this the

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1 staff's answer?

2 JUDGE TRIKOUROS: Oh, I'm sorry.

3 MS. MIKULA: That's okay.

4 JUDGE TRIKOUROS: I apologize. I'm
5 looking at Southern -- yes --

6 MS. MIKULA: I just wanted to make sure I
7 was looking at the right thing.

8 JUDGE TRIKOUROS: I'm looking at
9 Southern's answer. But I think I can still ask you
10 that question --

11 MS. MIKULA: Sure.

12 JUDGE TRIKOUROS: -- because --

13 MS. MIKULA: Let me just make sure I'm
14 looking at the right thing.

15 JUDGE TRIKOUROS: -- you've agreed with
16 all this. So what I'm hearing basically is that as
17 long as you do the proper analysis, you can amend that
18 license, even if the design is degraded to some
19 extent.

20 MS. MIKULA: I think, speaking of things
21 in terms of degradation makes this seem as if it is a
22 very rare occurrence that, you know, doesn't happen
23 very often, but departures and deviations from the
24 licensing basis and from codes, like ACI 349 and 117,
25 are quite common after the construction -- or during

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1 the construction of plants in this way.

2 And the NRC specifically continues to
3 evaluate these deviations from codes on a case-by-case
4 basis to assure that safety determinations are made
5 based on the design at hand, and that is what occurred
6 here.

7 JUDGE TRIKOUROS: Agreed. And the
8 relevant question is: Is that analysis done properly?
9 And that's really what we're discussing here.

10 MS. MIKULA: Yes.

11 JUDGE TRIKOUROS: And the -- I didn't see
12 anything new in the safety evaluation that wasn't in
13 the LAR, so, you know, the LAR and the safety
14 evaluation I consider to be one and the same document
15 basically. That last sentence in the SNC answer was
16 that, "Under this process, proposed amendments are
17 evaluated against the same NRC design criteria during
18 review of the initial license."

19 That sounds good, but I can't find that in
20 the LAR or in the safety evaluation of the NRC. All
21 I find is that those reinforcement requirements
22 against code are 50 percent. That appears to be the
23 only what I would call an engineering safety analysis
24 that was done. Is that correct? Or was there more
25 safety analyses done that you may be aware of that I'm

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1 not?

2 MS. MIKULA: Your Honor, I think the
3 important thing to remember here is that this is a
4 contention admissibility proceeding, and Petitioners
5 must meet the contention admissibility requirements,
6 and those include creating a genuine dispute with an
7 application and identifying material facts that are
8 necessary to the NRC's findings.

9 None of the information in any of the
10 contentions really and specifically contention 1 makes
11 those -- or meets those requirements. The Petitioner
12 here has not demonstrated a genuine dispute with the
13 application, because they did not engage in the
14 calculation that you're discussing. They did not
15 dispute the outcome of the calculation. They did not,
16 again, engage with it. I think that that's
17 dispositive in this circumstance of stating that
18 Petitioners have not raised a genuine dispute.

19 JUDGE TRIKOUROS: Well, again, the
20 Petitioner did specifically raise the issue of whether
21 or not there was a degradation -- in the analysis,
22 whether there was a degradation relative to the
23 initial license analysis.

24 MS. MIKULA: Uh-huh.

25 JUDGE TRIKOUROS: And, you know, the words

1 I'm reading from --

2 MS. MIKULA: sure.

3 JUDGE TRIKOUROS: -- are basically
4 regardless, again, of whether it's staff or the
5 Southern Nuclear, you both take the same position on
6 this, that things were done in accordance with the
7 initial license. But it was never -- what those were
8 were not discussed in the LAR.

9 It doesn't say that we have this design
10 margin now. In the initial license, we had that
11 design margin. It would have been very nice to have
12 seen that. It's what the Petitioner is raising in his
13 pleading, and I can't seem to get a direct answer on
14 what that was.

15 MS. MIKULA: I think, Your Honor, that is
16 because again here, because we're looking at
17 contention admissibility requirements. Those original
18 margins of safety would not change the ultimate
19 conclusion here, that the margin of safety required by
20 ACI 349 is still met with the change in tolerances.
21 And, you know, Petitioner here doesn't explain why
22 specifying these original margins is material to the
23 staff's findings, which is, again, a necessary
24 contention admissibility requirement.

25 JUDGE SPRITZER: Where would we look to

1 find what findings the staff had to make in the
2 regulations or anywhere else?

3 MS. MIKULA: Your Honor, the application
4 here, I believe, makes clear that the margin of safety
5 calculation was done by the Applicant, and it also
6 makes clear what components and what variables go into
7 that margin of safety calculation. And those don't
8 include the original margins of safety.

9 So when evaluating whether or not this
10 continues to meet those margins of safety, the
11 material issues are those that would go into that
12 calculation, and the original margins of safety are
13 not -- are, therefore, not material to the staff's
14 findings.

15 JUDGE SPRITZER: I guess what I'm asking:
16 Is there anything you can point to us in the Code of
17 Federal Regulations or a staff guidance document, if
18 there is one that's on point, that would say, in
19 effect, what you just said? All we need to do is look
20 at the margin of safety. If it's greater than -- what
21 is it? -- essentially you're meeting the ACI code. If
22 that's enough, that's all we need to know. We're
23 done. We can grant the license amendment.

24 Is there anything on point in the Code of
25 Federal Regulations or in NRC guidance that you know

1 of? And if you want to ask your experts, maybe they
2 could help with that, but that's --

3 MS. MIKULA: Sure.

4 JUDGE SPRITZER: In other words, as a
5 Judge, I want to see something that tells me, okay,
6 here are the findings the staff has to make to grant
7 the license amendment. Here's the information that
8 was provided in the license amendment request. They
9 match up. Therefore, we're done. That seems to be
10 what you're telling me, but I don't have any reference
11 point to say, That's all that's required here.

12 MS. MIKULA: And I understand, Your Honor,
13 and I can confer with my colleagues to check that
14 specifically for you. But, again, I want to bring
15 this back to the burden that's on Petitioner to meet
16 the contention admissibility requirements.

17 And as I've stated, the Petitioner here
18 has not demonstrated a genuine dispute with the
19 application or identified these material issues,
20 because, again, Petitioner does not even engage with
21 this calculation or present any explanation as to why
22 this calculation is incorrect or the conclusions in
23 the application are incorrect.

24 And I think, again, Your Honor, that's
25 dispositive of this contention admissibility -- these

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contention admissibility requirements.

JUDGE SPRITZER: Well, one way to look at
it is they're alleging a material omission from the
license amendment request, namely the original
margins, and I'm trying to find out, what would I look
at to determine whether that is or is not material.
But maybe you can help me with that.

8 We're up past noon. Obviously we're
9 moving a little slower than I had anticipated. Let us
10 briefly confer, and we'll decide where we want to go
11 from here.

12 MS. MIKULA: Okay. Thank you, Your Honor.

13 | (Pause.)

14 JUDGE SPRITZER: All right. I think,
15 given that it's noon and we've been keeping you here
16 for -- we've kept you here for two hours, we
17 definitely need to take a break at this point. Maybe
18 we should just go ahead and break for lunch, come back
19 at 1:00. I think we can realistically get out of here
20 by 2:30. Is that going to pose a scheduling problem
21 for anyone, any plane reservations or anything like
22 that?

23 (No response.)

JUDGE SPRITZER: Okay. Hearing no
complaints, that's what we'll do. We'll take a break.

1 now, resume at one o'clock. If you want to confer
2 further -- we'll briefly come back to contention 1
3 with respect to any issues that we've asked you about.
4 Maybe we might have a few additional questions that we
5 think of over the break, and then we'll move on to
6 contentions 2 and 3.

7 Thank you. We'll stand in recess.

8 THE CLERK: All rise.

9 (Whereupon, at 12:05 p.m., the hearing in
10 the above-entitled matter were recessed, to reconvene
11 at 1:00 p.m., this same day, Tuesday, March 15, 2016.)

A F T E R N O O N S E S S I O N

(1:05 p.m.)

THE CLERK: All rise.

4 JUDGE SPRITZER: Thank you. You may be
5 seated.

6 All right. We will resume with contention

7 1. Does either the NRC staff or the Licensee have
8 anything further in response to the questions you were
9 asked before the break?

10 MS. MIKULA: I do, Your Honor. So, Your
11 Honor, you asked me before the break where a person
12 can go to find what information is material, and I
13 have an answer for you. The code 349 is required as
14 Tier 2 Star information by virtue of its inclusion in
15 the AP-1000 design, which is incorporated into Part
16 52, Appendix D.

17 JUDGE SPRITZER: Appendix what?

18 MS. MIKULA: Appendix D.

19 JUDGE SPRITZER: As in dog?

20 MS. MIKULA: As in dog.

21 JUDGE SPRITZER: All right.

MS. MIKULA: So by virtue of that, the material information is the information that is deemed material for these determinations by the code itself.

25 JUDGE SPRITZER: Okay.

1 MS. MIKULA: And in addition, if Your
2 Honor is interested in more information about the
3 staff's review of these types of determinations, the
4 standard review plan, which can be found at NUREG 0-
5 800, and specifically Section 3.8.3 will give you more
6 information on that. And both of these are publicly
7 available.

JUDGE SPRITZER: All right. Very well.
Did you have anything further?

10 MS. MIKULA: Your Honor, you also -- this
11 is not in regards to contention 1. This is in regards
12 to standing, but you also requested more information
13 about the Perry case, the Cleveland --

14 JUDGE SPRITZER: Okay. Cleveland
15 Illuminating?

16 MS. MIKULA: Sure. And if you don't mind,
17 Your Honor, I would like to distinguish that case from
18 the license amendment at issue here.

19 JUDGE SPRITZER: All right.

20 MS. MIKULA: So in Perry, the license
21 amendment there would have transferred the reactor
22 vessel material surveillance withdrawal schedule from
23 the technical specifications into the UFSAR. Now, the
24 import of this is that it would have deprived the
25 public the right to notice and hearing on a change --

1 a future change in the scheduling.

2 JUDGE SPRITZER: Uh-huh.

3 MS. MIKULA: So the Court determined there
4 was standing there, not because of the specific
5 license amendment at issue, but because of the
6 implications of that license amendment and that future
7 license amendments on that same withdrawal schedule
8 would no longer have that notice and hearing involved.

9 And this case is obviously different,
10 because there is no deprivation and no change in the
11 way that we saw in the Perry case. This is a license
12 amendment without those sorts of implications, and so
13 without demonstrating that the license amendment at
14 issue poses a clear potential for off-site
15 consequences, the Petitioners cannot invoke the
16 proximity presumption here.

17 JUDGE SPRITZER: Just the Commission did
18 say in that case, "The material condition of the
19 plant's reactor vessel obviously bears on the health
20 and safety of those members of the public who reside
21 in the plant's vicinity." That's at the end of --
22 let's see. It's 38 NRC at page 96.

23 It seems to me that, you know -- wouldn't
24 you agree that the material condition of the walls
25 that surround the -- the safety-related walls that

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1 surround the plant's reactor vessel also bear on the
2 health and safety of those members of the public who
3 reside in the plant's vicinity?

4 MS. MIKULA: Again, Your Honor, when
5 discussing the Perry case, I think one of the
6 determinations on standing that the Commission made
7 there was in future-looking to future license
8 amendments. And because the public's right to notice
9 and hearing would be changed if this license amendment
10 in Perry was to go forward, I think the concern was
11 future license amendments dealing with the same issue,
12 the withdrawal schedule, would not have the same
13 notice and hearing as would be before the license
14 amendment, so --

15 JUDGE SPRITZER: I understand your point
16 about that, but I guess what I'm saying is, they do
17 make a specific statement. I mean, it wasn't just --
18 one of the things that they were concerned with is,
19 "The material condition of the plant's reactor vessel
20 obviously bears on the health and safety of those
21 members of the public who reside in the plant's
22 vicinity."

23 That's a kind of generic statement. They
24 obviously weren't faced with a specific amendment that
25 was going to change the material condition. They're

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1 just saying, as a generic -- as a general matter, you
2 know, the condition of the reactor vessel is relevant
3 to the public health and safety.

4 Isn't that also true with respect to the
5 safety-related walls that protect the reactor vessel
6 and that have other components, as Judge Trikourous
7 mentioned earlier, safety-related components running
8 through those walls? Isn't that also a safety-related
9 issue as a general matter?

10 MS. MIKULA: Well, Your Honor, I believe
11 that determining something is relevant is very
12 different from showing that it poses a clear potential
13 for off-site consequences, which is what is necessary
14 here to show that the proximity presumption applies.
15 And again, I think the circumstances here surrounding
16 this particular license amendment are very
17 distinguishable from the license amendment at issue in
18 Perry, because of that change in the public right to
19 notice in a hearing.

20 But, again, the Commission statement there
21 that it's relevant doesn't necessarily mean that it
22 would meet in every circumstance the clear potential
23 for off-site consequences test, and I don't believe
24 that that's what they're saying there.

25 JUDGE SPRITZER: All right. Anything

1 further?

2 MS. MIKULA: No, Your Honor.

3 JUDGE SPRITZER: Did the Licensee have
4 anything further in response to our questions on
5 contention 1?

6 MS. RONNLUND: Yes, Your Honor. First of
7 all, I agree with the assessment of the Perry case in
8 response to standing that was just discussed and would
9 like to just add that in that case, the issue was
10 particularly that the plant's reactor vessel bears on
11 health and safety of the public, and in this case,
12 there is no such direct connection to the reactor
13 vessel at issue, so there's not a similar material
14 issue in that case. I'd just like to add that
15 additional distinction, as well as the procedural
16 distinction already discussed.

17 With respect to --

18 JUDGE SPRITZER: Are you saying that the
19 structural walls -- the safety-related structural
20 walls are somehow qualitatively different from the
21 reactor vessel in terms of their relationship to
22 public health and safety?

23 MS. RONNLUND: I think in Commission
24 precedent, there is a clear distinction made
25 between -- in standing -- speaking in the standing

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1 inquiry, there is a distinction made between
2 situations where very close relationship to the
3 reactor, such as the reactor vessel and power uprate
4 or other obvious consequences directly connected to a
5 release of radioactivity are considered to involve
6 obvious potential of off-site consequences, whereas
7 here the walls in question do not have that same level
8 of connection to a potential accident and would not
9 meet that same standard under the Commission's
10 precedent for the proximity presumption.

11 JUDGE SPRITZER: Okay. Anything further?

12 MS. RONNLUND: I have an additional
13 clarification with respect to contention 1.

14 JUDGE SPRITZER: All right.

15 MS. RONNLUND: The standard that was
16 discussed, the standard for the staff's review, the
17 standard that a license amendment must meet when it's
18 submitted, that standard is found in Section 59.92 of
19 the Commission's regulation, and essentially it is
20 that a license amendment will be reviewed based on the
21 standards and requirements that are applicable to the
22 original license as applied to the particular
23 scenario.

24 In this case, those standards are outlined
25 in the license amendment request and were specifically

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1 general design criteria 1, 2, and 4, in addition to
2 several other regulations that were cited in the
3 license amendment request. So the standard for the
4 review of what the license amendment must show is that
5 it continues to meet those same standards applicable
6 to the original license.

7 In this case, the analysis showed that
8 based on compliance with ACI 349, as committed to in
9 the licensing basis, which is previously approved,
10 those original standards applicable through the
11 general design criterion listed continue to be met.
12 So that is the standard for the license amendment, and
13 that is how it is determined what is material to the
14 staff's findings, and I think --

15 JUDGE TRIKOUROS: Wait. Let me interrupt
16 you. Is that the standard, that they continue to meet
17 the standards? Or what it says under the safety
18 evaluation is that there would be no appreciable
19 decrease in the design margins of the -- so in other
20 words, if you met the standard by a factor of 2 in the
21 original design and you meet it by a factor of .5 in
22 the new design or the modified design, that doesn't
23 sound like it would be acceptable, even though it
24 would meet what you said. Both the original and the
25 revised would meet the standard.

1 But according to your SE, it has to have
2 no appreciable decrease from the original design.

3 MS. RONNLUND: Your Honor --

4 JUDGE TRIKOUROS: Is that -- which is
5 the --

MS. RONNLUND: The regulatory standard is found in 50.92, and the considerations applied to the license amendment are the considerations applicable to the original license in question. And so, yes, if the license amendment request meets all the applicable requirements and standards that would apply to the original request, it may be accepted by the staff. And here that's reasonable assurance of adequate protection, and no -- not inimical to the common defense and security.

16 JUDGE TRIKOUROS: Okay. I'll ask -- let
17 me ask it again, because I don't think I got the
18 answer that I was expecting. So if the original
19 design had a factor of safety of 2 over some standard,
20 say, an ACI standard, and the modifications that are
21 being made or proposed provide a factor of safety of
22 1 -- or maybe I should have said factor of safety of
23 3, and the new one is a factor of safety of 1-1/2.

That would meet what you just said. It
meets the standard, but there would be more than an

1 appreciable decrease in the design, the new design
2 versus the original design. Which is the factor --
3 which is the relevant relationship here? Because you
4 say in your safety evaluation, Section 3.1.4, you say,
5 "The corresponding changes to the design details for
6 the structural wall modules result in no appreciable
7 decrease in the design margins of the internal
8 containment structures."

14 MS. RONNLUND: So backing up, just first,
15 there has been no allegation by Petitioners in this
16 case of any appreciable decrease in safety. So that's
17 the first thing. There's been no allegation here on
18 the record that that is an issue.

19 But in terms of the standard that applies
20 from the Licensee's perspective, creating the license
21 amendment request and submitting it, the standard that
22 must be met is that standard that applied to the
23 original license. Now, it is also true that if you
24 find there is no appreciable decrease, then it would
25 be necessarily true that you meet the original

standard as well.

2 So I don't think it's that the standard is
3 there's no appreciable decrease and you have to meet
4 that standard. It's that if you show there is no
5 appreciable decrease, then you've also shown you meet
6 the original standards. But it is the original
7 standards, as stated in 50.92, that control whether
8 the license amendment should or should not be granted.

MS. RONNLUND: The standard is to meet the regulatory requirements applicable to the original license, and here those are the general design criteria listed, and they're discussed in more detail in the license amendment 1, 2, and 4, and those general design criterion, which are the applicable regulatory requirements, are met through the licensing basis commitment to ACI 349.

22 So the Licensee demonstrates compliance to
23 the ACI 349, which based on the licensing basis
24 demonstrates compliance with the general design
25 criterion, and that meets the NRC's regulatory

1 standards.

2 JUDGE TRIKOUROS: Okay. So it is the
3 actual meeting of the ACI standard that is relevant
4 here, not the margin to it.

5 MS. RONNLUND: Exactly, because that --
6 the commitment to the ACI 349 standard as showing
7 compliance with those design criteria and the ability
8 to meet the structural requirements has already been
9 approved. That commitment is in the licensing basis
10 and is approved for that purpose. So, yes. In this
11 case, showing commitment with the code meets all those
12 requirements.

13 JUDGE TRIKOUROS: All right. So all of
14 the discussions regarding margin in the LAR and in the
15 SE are really just a method of presenting the argument
16 that the standard is met.

17 MS. RONNLUND: Yes.

18 JUDGE TRIKOUROS: And the magnitude of the
19 margin is not significant.

20 MS. RONNLUND: Correct.

21 JUDGE TRIKOUROS: Does the staff agree
22 with that?

23 MS. MIKULA: Yes, Your Honor.

24 JUDGE TRIKOUROS: Okay.

25 JUDGE SPRITZER: All right. I think,

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1 unless you had anything further, let's move on. Mr.
2 Zeller, we did allow you to reserve five minutes for
3 rebuttal on contention 1. Do you have anything to add
4 on that?

5 MR. ZELLER: Just briefly, Judge Spritzer.
6 The -- in the -- regarding the industry standards and
7 precedent pointed to by the Applicant in the license
8 amendment request, Enclosure 1, page 10, points to the
9 precedent of the Summer Nuclear Power Station
10 construction during which a similar kind of variance
11 was granted of 1-1/4 inch over 1 inch, and points to
12 that as precedent for allowing the 1-5/8-inch change
13 in the tolerances.

14 This is part of a problem which, in
15 military terms, I think is called mission creep or in
16 plain English is camel's nose under the tent. If one
17 1-1/4 justifies 1-5/8, what does 1-5/8 justify?
18 Because what we see here is that you've got risk
19 assessment and plant parameter envelopes, and source
20 terms which are not revisited, basically taken from
21 granted, allowing greater and greater variations, and
22 that may not be a subject for this tribunal at this
23 point in time. But there's at least two dots right
24 now, and what would be the next one is my question.

25 JUDGE SPRITZER: All right. Do you have

1 anything further on contention 1? If not, we can move
2 on to contention 2.

3 MR. ZELLER: That's all I have. Thank
4 you, Your Honor.

5 JUDGE SPRITZER: All right. Why don't you
6 stay up there. I think you were going to be the
7 representative for the Petitioner on contention 2.

8 MR. ZELLER: Correct.

9 JUDGE SPRITZER: Why don't we move on to
10 that.

11 MR. ZELLER: Contention 2 is license
12 amendment request does not meet as low as reasonably
13 achievable, and the license amendment request does not
14 demonstrate that it meets standards for nuclear plan
15 worker radiation exposure limits.

16 The Southern Company has filed a
17 preliminary amendment request in order to avoid
18 construction delays. It allows, I think, a peremptory
19 alteration of the license before full public review.
20 I've stated that earlier, and we opposed both the PAR
21 as well as the license amendment.

22 And we've talked a great deal about the
23 American Concrete Institute standards being specific
24 to nuclear plants, so the nuclear discovered the
25 problem after the fact. The license amendment request

1 that the company sought was the result of an error in
2 construction, and they say in their Enclosure 1 of the
3 request that the need for this proposed change was
4 identified during a survey performed of installed
5 modules where it was identified that tolerances
6 specified in the COL, Appendix C, was not met in a
7 portion of one wall, and there were possible
8 inconsistencies with the underlying design
9 construction tolerances. That's Enclosure 1 at page
10 3.

11 So Southern Nuclear had missed that there
12 were deviations that they considered but did not
13 include radiation shielding. For example, in Southern
14 Nuclear's answer at page 3, they say that the only
15 deviation from the applicable codes proposed by the
16 license amendment request is from the concrete
17 thickness tolerances, not code requirements for
18 reinforcement, concrete composition, radiation
19 shielding or other provisions.

20 In fact, if we looked at the license
21 amendment request, it does discuss the impact of the
22 walls' effectiveness in providing radiation shielding
23 was examined, and there were no adverse effects, they
24 say, because the radiation source terms were
25 conservatively selected, and therefore that the

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1 proposed changes do not affect the radiological source
2 terms.

3 Of course, changing the concrete wouldn't
4 change the radiation source term, but the risk of an
5 accident, of course, is based on two factors. That's
6 likelihood of an incident, and the consequences of it.
7 If you have only one part of that equation or if you
8 don't change that part of the equation, then you don't
9 have a risk assessment which enables you to make sure
10 that your radiation exposure levels are as low as
11 reasonably achievable.

12 They go on to say that, you know, the
13 sufficient margin exists to justify the deviation.
14 That again is from Enclosure 1 of the request. But --
15 and that is the crux of what our dispute is here.

16 The Licensee concludes that, "Based on the
17 above" -- that is, the significant hazards
18 consideration determination, which is Section 4.3,
19 which relies on, Does the proposed amendment involve
20 a significant increase in the probability or
21 consequences of an accident previously evaluated; does
22 the proposed amendment create the possibility of a new
23 or different kind of accident; or does the proposed
24 amendment involve a significant reduction in safety.
25 These -- since there was no analysis done, except to

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1 assume that the source term was unchanged and
2 therefore, the new concrete standard was, therefore,
3 within -- had already been bounded, there was no new
4 analysis done of radiation, and in fact, that's what
5 they say right here.

6 So for these reasons and the reasons that
7 we pointed out previously, they have not shown that
8 the request meets as low as reasonably achievable.
9 There's been no new analysis done here to justify the
10 granting of the significant hazard -- I should say, of
11 the exception here for the license amendment request.
12 Sorry. I'm feeling a little congested right here.
13 But there is a fundamental omission here of an
14 analysis which would keep radiation tolerances as
15 according to ALARA.

16 JUDGE SPRITZER: All right. Thank you.
17 We'll hear from the Licensee on that issue.

18 MS. RONNLUND: With respect to contention
19 2, again, the over-arching question that is in front
20 of us today is whether contention 2 meets the
21 Commission's contention admissibility requirements in
22 2.309(f). Contention 2 fails to meet those
23 requirements for two central reasons. First, it is
24 unsupported by the requisite factual or expert
25 support, and second, it fails to raise a genuine

1 dispute with a material issue.

2 As a bit of background for the general
3 issue of potential worker exposure, which is what
4 contention 2 discusses, worker exposure is controlled
5 by two main components. One is the engineering of the
6 plant itself, here radiation shielding. But the other
7 is programmatic controls, the ALARA and 10 CFR Part 20
8 controls.

9 Those programmatic controls include
10 extensive mechanisms to control worker exposure, for
11 example, access control areas are blocked off during
12 operation, work plans. There are several things which
13 are all enumerated in the Vogtle UFSAR about how
14 worker exposure is controlled. BREDL's petition does
15 not discuss any of those control mechanisms which
16 function to actually limit worker exposure.

17 The fact is that even in the case where
18 radiation dose in a particular area changed, the
19 control programs control access in such a way that
20 worker dose, actual worker exposure, is not
21 necessarily and not definitely impacted by the change
22 in dose in a particular area, because access controls
23 and other programmatic issues protect them.

24 Without attacking any of those
25 programmatic controls, which are really the main way

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1 that the Licensee complies with ALARA and 10 CFR Part
2 20, BREDL has failed to genuinely dispute any of the
3 license amendment request conclusion regarding worker
4 exposure.

In addition, the very limited discussion of radiation shielding is unsupported in BREDL's petition. At a basic level, BREDL's petition alleges only that thickness of concrete walls can affect the radiation shielding function. There is no attempt at any technical analysis, and there is no expert opinion given providing how this particular license amendment would actually impact radiation shielding.

The Vogtle UFSAR explains and the license amendment references that the source for -- used in the design of the affected walls is conservative. The conservatisms for this calculation include not only the source but also not taking credit for rebar in the walls and some other elements that are outlined in the FSAR. Because that calculation that was used to design these walls for radiation shielding has those conservative inputs, the small as-built changes in the construction of the plant do not impact that bounding analysis, and that conclusion is explained in the license amendment request.

25 BREDL's petition does not make mention of

any of those inputs into the calculation or make any attempt to support why that bounding analysis would not control. For all of those reasons, BREDL's petition fails to meet the requirements in 2.309(f) and should not be admitted for hearing.

JUDGE JACKSON: In the documentation in
the company's answer to the petition, I believe at one
point it says basically what you were -- the point you
were just making, and I think it used the words that
"individual and cumulative radiation exposures do not
change." Do you mean by "do not change," do not
change significantly, because you used the word
"significantly" in other parts of it. And isn't it
important that it pass some significance tests? When
someone tells me that something won't change at all,
it just doesn't have a correct ring to it. Do you
really mean, will not change in any significant way,
or what?

19 MS. RONNLUND: Based on the analysis
20 conducted to support the license amendment, there was
21 no measurable impact on worker dose expected as a
22 result of these changes. Again, that's a combination
23 of the programmatic controls, as well as the radiation
24 surveys that will be done prior to worker entry that
25 will ensure that any changes in the dose in a

1 particular area, if it did change, the appropriate
2 controls would apply.

3 So based on all those programmatic
4 controls and the use of radiation surveys to make sure
5 that the worker going into a particular area would be
6 following appropriate controls, there was no
7 measurable impact on dose assessed.

8 JUDGE JACKSON: So it's really the
9 administrative control on the time spent in high
10 radiation areas that lead you to make that statement.

11 MS. RONNLUND: In addition to the finding
12 of no adverse impact on the radiation shielding
13 function.

14 JUDGE JACKSON: Okay.

15 JUDGE TRIKOUROS: You seem to put a lot of
16 emphasis on the fact that the radiation zones as
17 defined in Part 20 didn't change. Is there any
18 significance to that -- given what you just said about
19 the programmatic controls and the fact that radiation
20 work permits have to be filed and surveys are done of
21 the radiation in the area and all that is done on the
22 spot, would there -- what would have been the
23 significance if a radiation zone had changed? Is
24 there something, some connection to some regulation or
25 anything that would cause that to have been a problem?

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1 MS. RONNLUND: Sure. The radiation zones
2 are essentially estimates that are used in part for
3 the purpose of determining how the areas in question
4 should be designed, to include design elements of
5 radiation control, for example, shielding. So in the
6 event that a dose changed enough to trigger a
7 different zone, which would be to a significance --
8 your point about significance, Judge, would be a
9 significant change, then additional analysis might be
10 conducted to determine if there were other impacts
11 required.

12 Here, where there is no such change in
13 dose determined due to the change in the wall
14 thickness and no adverse impact on radiation
15 shielding, those additional impacts were not
16 implicated, so the focus on that is really just a way
17 of explaining that the dose -- any potential dose
18 change that could have been associated with the
19 radiation shielding function would not result in a
20 change in zones. It's insignificant, although it was
21 not found.

22 JUDGE TRIKOUROS: And the source term that
23 is referred to as conservative is the normal operating
24 reactor source term in that zone. But, in fact,
25 seldom are people walking into containment during

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1 active reactor operation conditions. Were any other
2 times relevant, shutdown periods, where people are in
3 those regions for lengthy periods of time? Was that
4 looked at all? The most conservative may not be the
5 normal operating radiation, since no one's there
6 usually, but under certain shutdown refueling
7 conditions, there are people in there for hours and
8 hours on end.

9 MS. RONNLUND: If you wouldn't mind, I'd
10 like to take a moment just to confer with my technical
11 expert on that area before -- I want to make sure that
12 I answer your question correctly.

13 (Pause.)

14 MS. RONNLUND: Thank you for that. The
15 assessment is still conservative during shutdown
16 periods. In addition, due to the relatively minimal
17 equipment in the areas in question, time in those
18 areas would be very limited, which is also a control
19 that would affect dose during shutdown periods.

20 JUDGE TRIKOUROS: And, of course, the
21 programmatic requirements would have -- would apply in
22 all cases.

23 MS. RONNLUND: Exactly. The radiation
24 surveys will confirm dose, and appropriate
25 programmatic controls will apply in all cases.

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1 JUDGE SPRITZER: Okay.

2 JUDGE JACKSON: Just quickly, realizing
3 you can implement ALARA with the administrative
4 controls, do you know what you would expect the impact
5 to be in the coolant discharge tank room would be if
6 you just decreased that three-foot wall thickness by
7 5/8 of an inch? Are we talking about a percent? Or
8 is that something you would know?

9 MS. RONNLUND: Well --

10 JUDGE JACKSON: I mean, I'm just trying to
11 get a -- I would expect that that change would be
12 slight.

13 MS. RONNLUND: It is a somewhat
14 complicated question for that particular room, because
15 in that room, the dose -- the controlling dose for
16 exposure purpose is actually the tank itself, which
17 would be in the room with the worker, so this wall
18 would not affect the controlling dose in that room,
19 because it's not shielding from the tank. So we would
20 not expect the wall thickness to impact the dose used
21 to calculate the appropriate programmatic controls in
22 any measurable way.

23 JUDGE JACKSON: Okay. Thank you.

24 JUDGE SPRITZER: When you say that -- I'm
25 looking at page 8 of 13 in Enclosure 1 to the license

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1 amendment request. That last paragraph, it says, "The
2 increased wall tolerance was also examined with
3 respect to the walls' effectiveness in providing
4 radiation shielding, and no adverse impacts were
5 identified." Is that the statement we should be
6 looking at in terms of that issue? Is that where
7 you -- is there anyplace else in here where that's
8 discussed or explained how they arrived at that
9 conclusion?

10 MS. RONNLUND: By that issue, you mean
11 just the limits at issue of shielding alone, aside
12 from the programmatic controls?

13 JUDGE SPRITZER: Yes. Aside from the
14 programmatic controls. Exactly.

15 MS. RONNLUND: Yes. I think there is a
16 similar discussion, maybe with a little bit more
17 detail, three paragraphs up.

18 JUDGE SPRITZER: Okay.

19 MS. RONNLUND: That discusses the source
20 term, and that would lead you, of course, if you
21 wanted more information, back to the FSAR, which
22 explains the source -- excuse me -- the source, not
23 source term. That would lead you back to the SFAR,
24 which explains that in more detail.

25 JUDGE SPRITZER: All right. Thank you.

1 We'll hear from the staff on contention 2.

2 MS. MIKULA: Contention 2 is inadmissible.
3 Petitioner alleges that the application fails to meet
4 radiation protection standards and ALARA requirements
5 for worker safety. The application supports the
6 Licensee's conclusion that the amendment will have no
7 effect on radiation protection. Specifically, the
8 application states that the Licensee evaluated the
9 impact of the tolerance changes to the walls and found
10 that no adverse impacts to radiation protection were
11 identified.

12 BREDL has neither disputed the Licensee's
13 evaluation of radiation protection in the application,
14 nor has it identified factual or expert support for
15 its claims that radiation protection regulations are
16 not met. Contention 2 is therefore inadmissible,
17 because it does not meet the contention admissibility
18 requirements.

19 JUDGE JACKSON: Did the staff do anything
20 to independently evaluate the conclusion of no adverse
21 impact? I realize that it's almost a procedural
22 argument there, that the position taken in the LAR was
23 not specifically challenged, and I understand that.
24 I just wondered if there was anything done by the
25 staff to convince themselves that that was correct.

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1 MS. MIKULA: Well, Your Honor, the staff
2 evaluated and verified the information in the
3 application, and that's part of the staff's process
4 for looking through license amendment applications.
5 And, again, as I've noted before, here the staff's
6 safety evaluation can't be challenged by the
7 Petitioners in this proceeding. And as you've
8 mentioned already, the procedural argument is that
9 Petitioners here have failed to engage with any of the
10 conclusions in the application that the Applicant has
11 made with regards to radiation protection controls.

12 JUDGE JACKSON: Okay. Thank you.

13 JUDGE TRIKOUROS: Yes. Just a question in
14 terms of the sort of broader question regarding how
15 the out-of-tolerance conditions were identified. Were
16 these done as part of pre-ITAAC inspections or --

17 MS. MIKULA: I believe, Your Honor, that
18 these were identified not by the NRC but by the
19 Applicant themselves.

20 JUDGE TRIKOUROS: Yes. I understand, but
21 was it part of the Applicant's pre-ITAAC inspections?
22 What were the circumstances? Was it part of the
23 normal quality control inspections or --

24 MS. MIKULA: I'm not sure I can speak to
25 that, Your Honor. I can try to confer with my

1 colleagues, but the Applicant might know that answer
2 better than I do.

3 JUDGE TRIKOUROS: All right. And I will
4 ask the question of them as well.

5 MS. MIKULA: Sure.

6 JUDGE TRIKOUROS: I'm bringing it up,
7 because the petition, the BREDL petition, makes a
8 point of it --

9 MS. MIKULA: Right.

10 JUDGE TRIKOUROS: -- you know, saying that
11 it was discovered sort of -- I think they used the
12 term, after the fact.

13 MS. MIKULA: Uh-huh.

14 JUDGE TRIKOUROS: So I just wanted to
15 understand that. But that had no relevance to
16 anything that the staff -- for the staff review.

17 MS. MIKULA: Exactly, Your Honor. The way
18 in which a license amendment is found to be needed has
19 no bearing on whether the license application -- or
20 the staff's evaluation of that license application.

21 JUDGE SPRITZER: All right. Do you have
22 any --

23 | (Pause.)

JUDGE SPRITZER: Judge Trikouros had a question for the Licensee's counsel, I think, the same

1 one that he just asked the NRC staff.

2 JUDGE TRIKOUROS: And I would also invite
3 Mr. Zeller to comment on it, if he wishes.

4 JUDGE SPRITZER: He'll be next. Why don't
5 we start with the Licensee.

6 MS. RONNLUND: I agree, first of all, with
7 NRC staff that the question of how this was discovered
8 is not relevant to the conclusions the staff must make
9 or the showing that the Licensee is obligated to make
10 in the license amendment request. In this particular
11 case, the deviation was discovered in the course of
12 constructing the first of the four walls, and the --
13 after the deviation was discovered, construction was
14 stopped.

15 The Licensee performed an evaluation
16 through its existing programs and determined that the
17 condition was safe and would meet all applicable
18 regulatory requirements, and on that basis, went with
19 the path of submitting a license amendment request to
20 conform the licensing basis to the condition found.

21 JUDGE SPRITZER: What exactly was the
22 deviation?

23 MS. RONNLUND: The measurement -- the
24 particular measurement as compared to the ITAAC
25 criteria in table 3.3-1 was outside the thickness

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1 tolerance of plus or minus 1 inch.

2 JUDGE SPRITZER: On the minus side or the
3 plus side?

4 MS. RONNLUND: To that level of detail,
5 I'm not familiar.

6 JUDGE TRIKOUROS: And did it encompass the
7 entire height of the wall, or was it just a region of
8 the wall?

9 MS. RONNLUND: Localized areas were
10 impacted, so not the entire wall. No.

11 JUDGE TRIKOUROS: Okay.

12 MS. RONNLUND: And, again, the Licensee
13 evaluated it immediately and determined that the
14 deviation was safe as is, and so that's the basis for
15 the submission of the license amendment request, to
16 ensure that the licensing basis and the construction
17 condition matched, and we're in compliance.

18 JUDGE TRIKOUROS: And this was an ITAAC.
19 Right? The thickness of that wall is an ITAAC.
20 Correct?

21 MS. RONNLUND: Yes, Your Honor.

22 JUDGE TRIKOUROS: And at some point, the
23 NRC would have done that measurement as part of the
24 ITAAC review. Right?

25 MS. RONNLUND: The NRC does have extensive

1 ITAAC inspection practices. I can't speak to
2 precisely whether that particular wall would have been
3 measured, but I would expect that, yes, their
4 inspection oversight processes would have found that
5 condition.

6 JUDGE TRIKOUROS: But that particular wall
7 was specifically in an ITAAC. Right?

8 MS. RONNLUND: Yes -- well, the ITAAC
9 references incorporates all the walls and then
10 references that Table 3.3-1.

11 JUDGE TRIKOUROS: Okay. So that would
12 have had to be verified at some point.

13 MS. RONNLUND: Yes.

14 JUDGE TRIKOUROS: Okay.

15 JUDGE SPRITZER: All right. Mr. Zeller,
16 do you have anything in rebuttal on contention 2?

17 MR. ZELLER: Yes, Your Honor. Thank you.
18 Once again, we return to the license amendment request
19 and the words of the Applicant that more or less beg
20 the question. It points to a safety analysis, for
21 example, on page 8, in about the middle of the page.
22 The safety analysis is based on proposed changes that
23 they say do not affect the radiological source term,
24 and the radioactive materials released to determine
25 what happens during an accident.

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1 The thickness of the concrete walls around
2 the reactor vessel is also not used as an input to the
3 probabilistic risk analysis, the PRA. The analysis
4 which had been done for the original license, the
5 source term analysis was done under the American
6 Concrete Institute codes 117 and 349. What this says
7 in the middle of page 8 is that basically there was no
8 safety analysis done, because they didn't have to do
9 one.

10 The Licensee is coming with hat in hand.
11 They need to prove that significant -- that there's no
12 significant hazard under 10 CFR 50.92, and in order to
13 qualify for the categorical exclusion that they also
14 request under 10 CFR 51.22(c)(9). So once again,
15 there is no basis for the categorical exclusion, and
16 because there has been no new analysis done
17 whatsoever. We're not able to find any, and that is
18 why -- that is our basis of our complaint.

19 JUDGE SPRITZER: All right. Any
20 questions?

21 JUDGE JACKSON: I have a question.

22 JUDGE SPRITZER: Okay.

23 JUDGE JACKSON: Mr. Zeller, as we
24 discussed earlier, the basis for standing was
25 basically concern for those living close to the

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1 facility, as, for example, spoken to by Rev. Howard.
2 On the other hand, this contention is focused on
3 worker safety, and says basically nothing about public
4 exposure. I just didn't see how this contention fit
5 in the overall standing argument that we had. Could
6 you give me your reasons or explain why it's relevant
7 to your overall concern?

8 MR. ZELLER: Yes, Judge Jackson. The --
9 as I pointed out during our discussion of contention
10 1, the different concrete -- the volumes within the
11 building and exposure to radiation, increased amounts
12 of hydrogen generated, these could conceivably lead to
13 accidents which would breach the containment. That's
14 the whole purpose of hydrogen igniters, is to reduce
15 the pressure on the concrete outer shell of the
16 building.

17 So, therefore, the difference in the
18 safety factor could lead to an accident which is of
19 consequence to the immediate area, that is, outside of
20 the plant, so that's outside of -- in addition to the
21 workers, of course, who would be affected first in
22 case of such a breach, an explosion within the plant
23 with hydrogen emissions, and also to the surrounding
24 community, which goes to the concerns by Mr. Claude
25 Howard.

1 JUDGE JACKSON: I didn't see anything in
2 the petition or your response that spoke to any of
3 that. I looked pretty carefully to see if it had
4 reference to external exposure, and it focused on
5 worker -- potential worker radiation exposure. Did I
6 miss something in there?

7 MR. ZELLER: I think it was alluded to in
8 the original petition and the replies. The exposition
9 of the hydrogen factor did come at a later date. I
10 admit that. Like today, for example, the consequences
11 of either -- which we considered earlier, was a less
12 robust concrete wall, leading to one type of
13 consequence, or the consequences of a thicker wall,
14 leading to a different type of consequence are part of
15 our initial complaint that the license amendment
16 request and the preliminary amendment -- or the
17 preliminary request -- preliminary amendment
18 request -- right -- are unjustified, and that the
19 construction delays which are cited also by the
20 Applicant are not an excuse for these kind of
21 shortcuts, safety shortcuts which we see happening.

22 In other words, they don't want to go back
23 and reconstruct a wall because it might slow down the
24 construction of the reactor. Granted, but what is
25 more important? Is it the date for the reactor

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1 opening, or is it public safety in the community of
2 Shell Bluff?

3 JUDGE JACKSON: All right. Thanks.

4 JUDGE SPRITZER: All right. I think we're
5 ready now to move on to contention 3. Who's going to
6 speak for the Petitioners on that contention?

7 MR. ZELLER: Judge Spritzer, the third
8 contention will be addressed by my colleague, Rev.
9 Charles Utley.

10 JUDGE SPRITZER: All right. Let's hear
11 from him.

12 REV. UTLEY: Good afternoon.

13 JUDGE SPRITZER: Good afternoon.

14 REV. UTLEY: I'm Charles Utley. I'm going
15 to speak on the environmental justice impact that we
16 feel that this community is adversely exposed to. As
17 a pastor of a local assembly in the Shell Bluff
18 community, I'm concerned with the parishioners that
19 are represented in the area.

20 If we look at environmental justice, in
21 12/8/98, I had the privilege of working on that bill
22 with President Clinton, and we looked at all of the
23 things that would impact. And when we started out
24 with it, we -- I couldn't help but look at my own
25 self. I grew up in the Shell Bluff area.

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1 At least I was born in the Shell Bluff
2 area, as a part of a sharecropper's family, socially
3 deprived, economically deprived, recently digital
4 divide, socially and economically depressed, a people
5 who have strived for the best for their children, but
6 out of all of this, there is a disproportionate amount
7 of contamination.

8 Though we're looking at Plant Vogtle 3 and
9 4, we've also had 1 and 2, and there is Savannah River
10 site which is just a stone's throw away across the
11 river. So we're looking at one entity, but the
12 community feels more than just one. They feel the one
13 from across the river, and they also see the smoke
14 stacks of these various industries.

15 In that same time, they're living in the
16 toxic soup, which everyone else is not the privilege
17 of having to live there, so therefore, it makes it a
18 disproportionate amount of contamination. And when
19 you're in the area, they still have the love, they
20 have the respect for one another. And what we want to
21 do is to tell this Court that it's time, when we look
22 at a small thing, 1-5/8 or 1/16 of an inch, someone
23 may look, not make much.

24 But, however, when you compile them, you
25 get more than just a little. For one thing, it's more

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than just a little when the lives of those who are in
the area are impacted. You have to realize that some
of those in that area are extremely old. I've had the
privilege of talking with a lady just this past week,
96, and as well as infants that are growing up in the
area.

When we look at just that thickness of the wall, will it leach out in years to come? Will there be an impact, though it's near ground level and we know that it will impact water because it is a farm area and there is constant irrigation going on, and there's also the idea of the air and the wind that blows it.

14 We know tradewinds come, and we know it
15 goes from east to west. That's no mystery. And these
16 communities are sit in a position where the tradewinds
17 bring them over, and though they may be inside and we
18 look at it, we say, well, that is contained within the
19 container, the first exposure are those that are
20 working. That's true.

21 But we don't want to just protect the
22 workers from disproportionate amount of exposure, but
23 we want to protect not the first five miles either.
24 We want to protect this entire country, because
25 discrimination and all of the other things are not

known by radioactive. They just kill. They just escape, and therefore, when the community's this close and with as populated as it is, we need to do everything that's humanly possible to make sure that there isn't a minute or anything that's going to hurt these communities.

7 And let me just say this, and we always
8 talk about high technology. Even today, they don't
9 have Internet. They must get it some other way. So
10 when we talk about even things that people walking
11 around as a common denominator as something that they
12 can do, that's an outstanding thing for this
13 community.

14 There is a disproportionate amount that
15 they are receiving, and when we look at it, though,
16 like I said earlier, it doesn't seem like much, but it
17 only took the Flint water to cause a disaster, and it
18 will not just affect the citizens of Shell Bluff.
19 It's going to affect everybody, so therefore, with the
20 high technology and with all of the things we have
21 even here in the Augusta area -- we have cyberspace;
22 we have all of that going on -- let's use the best
23 technology that's available.

24 If it says, five, we need to make whatever
25 is left. If it calls for the whole 1-5/8, let's make

1 it that. But let's definitely not take away, because
2 I believe that theory says, if I make a theory, I'm
3 going to prove, because I'm going to put those
4 elements in place to make me prove it. I want to be
5 able to prove it with actual figures and with a
6 visibility.

7 So I'm saying to you today that when we
8 look at it, don't put any more on this community than
9 they already have to bear. And I can say it from
10 experience, because like I say, I'm going back down
11 there tonight. I will see the lights on top of the
12 cooling tower. I will see the steam coming out at
13 sunrise. And I know that those who are living around
14 the area think about their vegetation. I will see
15 some of it's dying.

16 Yes, we don't know exactly where it's
17 coming from, but my goodness, we can sure stop it if
18 we can. But let us build, let us build in a way where
19 we all can live, because we are the caretakers of this
20 land, and if we let one entity start deviating, then
21 we've lost it. We must hold them accountable to every
22 I being dotted and every T being crossed, which
23 includes the thickness of these walls. Thank you.

24 JUDGE SPRITZER: Thank you. Let's hear
25 from the Licensee on contention 3.

1 MS. RONNLUND: With regard to contention
2 3, I think, as I've said, for each contention we've
3 discussed this morning, the relevant question we are
4 looking at is whether or not contention 3 as pled by
5 BREDL meets the Commission's contention admissibility
6 standards.

7 Here, contention 3 fails to meet each of
8 the 2.309(f)(1) admissibility requirements. To
9 understand the basic failure of contention 3, we first
10 have to do a little bit of background to understand
11 the regulatory posture that we are in in this
12 particular license amendment phase.

The Vogtle COLs were issued in 2012.
Along with those licenses, a NEPA analysis was performed as required by NRC regulations, and that NEPA analysis is now closed. The license amendment request is not a reopening of the NEPA analysis that was associated with the original siting of the plant, nor are the environmental impacts associated with the plant in general at issue here today.

21 In accordance with NRC regulations,
22 license amendments are evaluated based only on the
23 impact of the amendment themselves. In the NRC's
24 regulations in Part 51, specifically 51.22(c)(9), the
25 Commission has determined that the listed items in

1 that regulation, which includes license amendment
2 requests, are categorically excluded from NEPA, in
3 other words, are categorically excluded from requiring
4 additional environmental analysis, so long as three
5 requirements are met.

6 As discussed in the Vogtle license
7 amendment, this license amendment meets those three
8 requirements for a categorical exclusion, and
9 therefore, no environmental analysis was required. It
10 is key that the BREDL petition failed to even
11 challenge the categorical exclusion finding.

12 The Commission's precedent on this point
13 is black letter law, is crystal clear. The only way
14 that environmental justice is at issue in a proceeding
15 is through NEPA. Environmental justice does not in
16 its own right give rise to a contention. So because
17 Petitioner failed to challenge the categorical
18 exclusion, which indicates that no additional NEPA
19 analysis is required to support this license
20 amendment, the Petitioner has failed to raise any
21 genuine issue on any environmental justice issue.

22 In other words, without first going
23 through the categorical exclusion, Petitioner could
24 not reach the issue of environmental justice, and
25 Petitioner failed to go through the categorical

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1 exclusion here, and thus, there is no genuine issue.

2 In addition to that fatal flaw of the
3 contention, what is raised in the contention is
4 outside the scope of this proceeding regardless. Not
5 only is it outside the scope because of categorical
6 exclusion issue, but in addition, the claims in the
7 contention are broad, general attacks on the
8 Commission's policy with respect to environmental
9 justice. The Commission's policy statement on
10 environmental justice was issued in 2004, and it has
11 been upheld and applied in countless cases since that
12 time.

13 The executive order referenced by
14 Petitioners was even earlier than that policy
15 statement. The Commission's treatment of the policy
16 statement and the Commission's decisions on
17 environmental justice policy in general are not at
18 issue in this license amendment proceeding and cannot
19 be remedied through any action on this license
20 amendment. Therefore, the issues raised in contention
21 are fully outside the scope of this proceeding and
22 not admissible.

23 In addition and finally, the contention
24 has no factual or expert support which could give rise
25 to an admissible contention. Moving -- aside from the

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1 categorical exclusion flaw with no NEPA analysis being
2 required, even if there were some NEPA analysis
3 required, in order to have admissible contention, the
4 Petitioner would first have had to show a significant
5 environmental impact.

12 JUDGE TRIKOUROS: I have a question. Of
13 all of the design functions of these walls, is there
14 any aspect of one or more that deals with being a
15 barrier to prevention of radiation released to the
16 environment?

17 MS. RONNLUND: Release to the environment
18 out --

19 JUDGE TRIKOUROS: Yes. Do these walls act
20 as a barrier to the release of radiation to the
21 environment?

22 MS. RONNLUND: No, Your Honor. I think we
23 touched on this earlier briefly, but these walls do
24 not control gaseous or liquid effluents, and there is
25 no path for direct radiation through these walls to

1 the public.

2 JUDGE SPRITZER: All right. Thank you.

3 Does the NRC staff have anything to add on this
4 contention?

MS. MIKULA: Yes, Your Honor. Just
briefly, Your Honor, the NRC staff's position is that
the third contention is inadmissible. Petitioner
alleges that the license amendment poses environmental
justice concerns and that the NRC has not fulfilled
its duties with regard to executive direction. Any
arguments pertaining to policy decisions made by the
NRC are inadmissible as outside the scope of this
proceeding.

Petitioner fails to identify relevant supporting facts or expert opinion to support its claims of environmental justice violations. Further, Petitioner fails to dispute any portion of the Licensee's categorical exclusion analysis in the application, thereby failing to raise a genuine dispute with the application regarding a material issue of law or fact. Contention 3 is therefore inadmissible, because it does not meet contention admissibility requirements.

24 JUDGE SPRITZER: I don't think we have any
25 further questions on that. I think we understand the

1 staff and Licensee position.

2 MS. MIKULA: Thank you, Your Honor.

3 JUDGE SPRITZER: Mr. Utley, if you have
4 anything -- Rev. Utley, if you have anything further
5 to add, we'd be happy to hear from you for a few
6 additional minutes.

7 REV. UTLEY: Yes. Thank you, Your Honor.

8 There is one that's later than what was printed. It
9 was August 4, 2011. That's earlier than what was
10 previously stated in this -- and there is pertinent
11 information and pertinent things that you can get --
12 that we can provide the Courts with the number of
13 increasing death rates in that Shell Bluff community.
14 I must say I don't have them with me, but there is on
15 the bottom of the page, August 4, 2011. Thank you.

16 JUDGE SPRITZER: All right. Thank you.

17 All right. I think we've come to the end
18 of our hearing. The next step will be for the Board
19 to issue its decision. Time limit on that is 45 days.
20 We certainly expect to meet that, and with any luck,
21 we'll actually get it out sooner than that. So you'll
22 be hearing from us shortly.

23 Is there anything else we need to cover
24 today?

25 (No response.)

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1 JUDGE SPRITZER: Hearing nothing, we will
2 adjourn this proceeding at this time. Thank you for
3 everyone for attending --

4 Oh, there is one matter. For these
5 documents or exhibits that the Licensee displayed, we
6 probably should have them in the record somehow. Can
7 you reproduce them on maybe smaller size paper and
8 send them to us, and we'll have them included somehow?

9 MS. RONNLUND: The version with the
10 markings, Your Honor?

11 JUDGE SPRITZER: Yes.

12 MS. RONNLUND: Sure. We can do that.

13 JUDGE SPRITZER: All right. That would be
14 great. Is that all right with you, Mr. Zeller?

15 MR. ZELLER: Yes.

16 JUDGE SPRITZER: And the staff, I assume,
17 has no problem with that.

18 MS. MIKULA: Yes, Your Honor.

19 JUDGE SPRITZER: Very well. We will
20 adjourn now. Thank you. It's been an interesting and
21 useful argument, and you'll be hearing from us
22 shortly, as I said. Thank you.

23 THE CLERK: All rise.

24 (Whereupon, at 2:10 p.m., the hearing in
25 the above-entitled matter was concluded.)

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