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Title: Entergy Operations, Inc.
River Bend Station Unit 1
Oral Argument

Docket Number: 50-458-LR

ASLBP Number: 17-956-01-LR-BD01

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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In the Matter of: : Docket No.
ENTERGY OPERATIONS, : 50-458-LR
INC. : ASLBP No.
(River Bend Station, : 17-956-01-LR-BD01
Unit 1) :

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Thursday, November 30, 2017

Teleconference

BEFORE:

E. ROY HAWKENS, Chairman

MICHAEL F. KENNEDY, Administrative Judge

RICHARD E. WARDWELL, Administrative Judge

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CONTENTS

Introductory Comments by Judge Hawkens 5

Oral Argument by Sierra Club 7

Oral Argument by Entergy 43

Oral Argument by NRC Staff 73

Rebuttal by Sierra Club 95

Adjourn 100

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

(2:00 p.m.)

JUDGE HAWKENS: We are conducting an oral argument by telephone in a case entitled Entergy Operations, Incorporated, River Bend Station, Unit 1, Docket Number 50-458-LR.

My name is Roy Hawkens. I'm Chairman of this Licensing Board. I am joined in NRC headquarters by Judge Mike Kennedy and Judge Rich Wardwell. Judge Kennedy has his doctorate in nuclear engineering. Judge Wardwell has his doctorate in civil engineering.

Today's argument is in response to a petition to intervene filed by the Sierra Club. The petition challenges requests by Entergy Operations to renew the operating license for the River Bend Station, Unit 1 nuclear reactor, which is located near St. Francisville, Louisiana.

For the petition to be granted, Sierra Club must demonstrate standing. It must show at least one admissible contention as measured by the NRC's six-factor contention admissibility standard.

Would counsel for the parties please introduce themselves for the record, starting with the Sierra Club?

MR. TAYLOR: I'm Wallace Taylor from Cedar

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1 Rapids, Iowa.

2 JUDGE HAWKENS: Thank you. Entergy?

3 MR. BURDICK: Good afternoon. My name is
4 Stephen Burdick. I'm a partner with the law firm
5 Morgan Lewis and counsel to Entergy for this
6 proceeding. I am joined by my colleague, Kathryn
7 Sutton, a partner from Morgan Lewis. And we are
8 joined by in-house counsel and license renewal
9 personnel from Entergy who will be able to help us
10 respond to any of the Board's questions today, if
11 necessary.

12 JUDGE HAWKENS: Thank you. And I
13 understand that you, Mr. Burdick, will be presenting
14 arguing; is that correct?

15 MR. BURDICK: That is correct.

16 JUDGE HAWKENS: Thank you. Counsel for
17 NRC staff, please introduce yourselves.

18 MR. TURK: Good afternoon, Your Honor. My
19 name is Sherwin Turk. I am one of the three co-
20 counsel for the NRC staff in this proceeding. With me
21 in the room today are David Roth and Joseph Gillespie,
22 who are joining me as co-counsel in this proceeding.

23 We also have a number of NRC staff
24 technical members with us, the most senior of which
25 are Mr. Joseph Donohue and Mr. Benjamin Beasley. But

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1 I'll provide spellings to the court reporter later.

2 JUDGE HAWKENS: All right. Thank you.
3 And I understand Mr. Roth will be presenting argument
4 on Contentions 1 and 2, and Mr. Gillespie on
5 Contention 3; is that correct?

6 MR. TURK: That's correct, Your Honor.

7 JUDGE HAWKENS: All right. Thank you. As
8 indicated in the Board's scheduling order, we will
9 hear first from Sierra Club, then from Entergy, and
10 then from the NRC staff. Sierra Club has been allotted
11 60 minutes of argument time, and it may reserve up to
12 15 minutes for rebuttal. Entergy and the NRC staff
13 each is allotted 30 minutes of argument time.

14 Mr. Taylor, I understand you'd like to
15 reserve 15 minutes for rebuttal; is that correct?

16 MR. TAYLOR: Yes.

17 JUDGE HAWKENS: All right. Mr. Taylor,
18 you may proceed.

19 MR. TAYLOR: Thank you. This contention
20 -- or this petition actually presents three
21 contentions. I thought at first it might be well to
22 review the admissibility standards for contentions
23 that inform the standards that you laid out earlier in
24 2.309.

25 JUDGE HAWKENS: Mr. Taylor, this is Judge

1 Hawkins. I think that's a good approach once we get
2 to the contentions. Although nobody challenges
3 standing here, the Board does have an obligation to
4 evaluate it and assess standing. And before the
5 petition may be granted, I have to affirmatively
6 conclude that standing does exist.

7 To your knowledge, has the Commission ever
8 held that the 50-mile proximity presumption applies in
9 a license renewal case?

10 MR. TAYLOR: That's my understanding, yes.
11 I don't have any cases in front of me, but I have --
12 I have researched that, and I believe that's correct.

13 JUDGE HAWKENS: No. That the Commission
14 has directly held?

15 MR. TAYLOR: The 50-mile radius is a
16 presumption. And unless that presumption is rebutted,
17 I believe it stands.

18 JUDGE HAWKENS: Well, if the Commission
19 precedent, case law holds that it applies in certain
20 cases, not all cases, generally it does not apply in
21 license amendment cases. And this, although it's a
22 license renewal case, I believe it's characterized as
23 a license amendment case, and I'm just -- although I'm
24 familiar with Board decisions applying to 50-mile
25 presumption, I was not aware of any Commission case

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1 law which makes that holding. And I guess you're not
2 aware of any either; is that correct?

3 MR. TAYLOR: No, I'm not.

4 JUDGE HAWKENS: All right. Thank you.
5 You can proceed, then, to your contentions.

6 MR. TAYLOR: Thank you. Contention 1 was
7 that the environmental report that was filed by
8 Entergy does not properly and adequately state a
9 purpose and need for the relicensing of the River Bend
10 Station. The purpose and need is set out in Section
11 1.0 of the environmental report, or the ER, and we
12 have cited to that in our -- in our petition.

13 And that section references a guidance
14 document that essentially says, as I see it, that the
15 purpose and need of the project or the action is to
16 relicense River Bend. Even though the guidance
17 document talks about the relicensing being an option,
18 there really is no other option that's being offered
19 because it says the proposed action is to relicense
20 the River Bend plant. So the --

21 JUDGE HAWKENS: Can I interrupt? This is
22 Judge --

23 MR. TAYLOR: You bet.

24 JUDGE HAWKENS: -- Hawkens again.

25 MR. TAYLOR: You bet.

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1 JUDGE HAWKENS: I am looking at that, the
2 purpose and need statement, and as I read it it says
3 that the purpose and need is to provide an option that
4 allows for baseload power generation capability beyond
5 the term of the current nuclear power plant. So it's
6 to provide that option.

7 That's not the only option, though, and
8 that's revealed by -- I think Entergy represented that
9 at least 18 alternatives to that option were
10 identified. So I find it difficult to understand your
11 assertion that this is the only option contemplated by
12 the purpose and need statement, much less by the ER.

13 MR. TAYLOR: As I read the ER, the -- they
14 looked at other alternatives. But if you look at the
15 purpose and need statement, it refers to simply
16 relicensing the River Bend Station. And in fact, in
17 the staff answer at page 18 and 19, it says that the
18 purpose and need is to preserve continued operation of
19 the reactor. That means relicensing the reactor.

20 JUDGE HAWKENS: What did you just cite?

21 MR. TAYLOR: The answer that was filed by
22 the NRC staff.

23 JUDGE HAWKENS: All right. I'm not really
24 interested in the answer right now. For present
25 purposes, I'm looking at the purpose and need for the

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1 action. The action is the proposed renewal of the
2 plant. The purpose and need, though, by the expressed
3 language as I read it is to provide an option that
4 allows for baseload power generation beyond the term
5 of the current nuclear plant.

6 MR. TAYLOR: Well, then, I guess -- I
7 don't want to repeat myself necessarily, but the --
8 they talk about an option, but it's in terms of
9 preserving the operation of River Bend to provide the
10 power that River Bend has been providing.

11 JUDGE HAWKENS: Well, the proposed action
12 would preserve that option. But the purpose and need
13 just identifies that as an option, and then the
14 alternatives analysis look at a number of other
15 alternatives.

16 MR. TAYLOR: But it seems to me looking at
17 the purpose and need statement that it really doesn't
18 preserve any other options other than renewing the
19 license. I mean, the language talks about preserving
20 other options, but it doesn't -- it still talks in
21 terms of renewing the license in order to preserve
22 that -- River Bend continuing to operate and provide
23 power.

24 JUDGE HAWKENS: Your principle concern
25 with this purpose and need statement is that it's so

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1 narrow it doesn't -- it doesn't allow for sufficient
2 consideration of alternatives?

3 MR. TAYLOR: Yes.

4 JUDGE HAWKENS: Okay. So this is really
5 -- it seems to me maybe it's best to go into the
6 consideration of alternatives, because I -- by the
7 plain language, it's difficult for me to understand
8 your interpretation that this only contemplates one
9 alternative, given the number of alternatives that
10 were in fact considered.

11 I have another question also regarding
12 your advocacy argument. You made an advocacy
13 argument in your opening pleading. You did not renew
14 it in your reply, and I'm wondering, are you
15 preserving that argument? Or are you abandoning that?
16 And if you are preserving it, I'd like a further
17 explanation of it.

18 MR. TAYLOR: I'm sorry, Judge. I didn't
19 understand what allegation it was you were referring
20 to.

21 JUDGE HAWKENS: You said the NRC is
22 advocating its duty under NEPA by deferring to
23 decisions by other decisionmakers on energy planning.

24 MR. TAYLOR: Right. Again, that goes to
25 the guidance document that I cited, and they are

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1 saying that the purpose and need will depend on
2 decisions by other decisionmakers, other agencies,
3 other decisionmakers.

4 And my point was that the purpose and need
5 has to be based on what the NRC finds to be -- and
6 this Board finds to be the proper purpose and need for
7 River Bend relicensing, and that the -- when the NRC
8 was providing the guidance that Entergy says they are
9 relying on, deferred to other agencies, at least in
10 some sense or to some extent to other agencies.

11 JUDGE HAWKENS: So are you saying that
12 NEPA imposes a statutory obligation on the NRC to make
13 engineering -- excuse me, energy planning decisions
14 for purposes of the EIS?

15 MR. TAYLOR: I think that the -- it
16 imposes on the NRC, and in looking at this
17 environmental report, to look at the purpose and need
18 in terms of whether or not it allows the NRC to make
19 that decision as to what the purpose and need is
20 rather than deferring to other agencies.

21 And by deferring to other agencies, the
22 NRC is not carrying out its duty to this particular
23 instance with this particular plant to properly
24 examine the purpose and need, whether it's too narrow,
25 whether it allows for reasonable examination of

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1 alternatives.

2 JUDGE HAWKENS: I think your answer to my
3 question was yes. Let me pose it again and see --
4 I'll try to pose it in a way that you can answer yes
5 or no.

6 MR. TAYLOR: Okay. I'm sorry.

7 JUDGE HAWKENS: Does NEPA impose a
8 statutory obligation in this instance on the NRC to
9 engage in energy planning decisions?

10 MR. TAYLOR: Well --

11 JUDGE HAWKENS: That would be a yes or no.

12 MR. TAYLOR: The way you've posed the
13 question, no, I don't think that is the issue.

14 JUDGE HAWKENS: Well, if it hasn't, then
15 to the extent the NRC has not second-guessed any
16 energy planning decisions here, it has not advocated
17 its responsibilities under NEPA; is that correct?

18 MR. TAYLOR: I think it has, because we're
19 not talking about energy planning decisions; we're
20 talking -- at least I'm not.

21 JUDGE HAWKENS: What are you -- what
22 responsibility did the NRC advocate then?

23 MR. TAYLOR: It advocated the
24 responsibility to look at the purpose and need in
25 terms of whether or not the relicensing of River Bend

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1 is needed in terms of providing the power that is
2 necessary in terms of looking at the alternatives. I
3 don't think it's requiring the NRC to engage in the
4 types of decisions that you were referring to.

5 JUDGE HAWKENS: Okay.

6 MR. TAYLOR: But we were talking about the
7 purpose and need for the relicensing of River Bend,
8 and I think that does require the NRC to take the
9 responsibility to determine whether there is a purpose
10 and need for the relicensing of River Bend.

11 JUDGE HAWKENS: Which, again, to me this
12 line of argument by you tends to merge into Contention
13 2 where you're challenging their alternatives
14 analysis.

15 MR. TAYLOR: Yes. Well, I do think
16 Contentions 1 and 2 have some relationship, because
17 the purpose and need dictates the range of
18 alternative.

19 JUDGE HAWKENS: If you have nothing more
20 to add on Contention 1, why don't you proceed to
21 Contention 2, please.

22 MR. TAYLOR: Okay. We're contending here
23 that there was not an adequate discussion or analysis
24 of the alternatives of renewable energy and energy
25 efficiency. 40 CFR 1502.14 says that the agency must

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1 rigorously explore and objectively evaluate
2 alternatives.

3 We don't believe that renewable energy and
4 energy efficiency were given substantial treatment.
5 This is a valid contention, I believe. Entergy's
6 argument is that these alternatives were considered,
7 but whether or not they were adequately considered is
8 a factual issue for the board to decide at an
9 adjudicatory hearing, and it's not an issue of the
10 admissibility of the contention.

11 And, in fact, renewable energy and energy
12 efficiency were not even considered as reasonable
13 alternatives and --

14 JUDGE HAWKENS: Well, that statement,
15 you're saying they weren't considered in combination
16 or they weren't considered at all?

17 MR. TAYLOR: The ER itself says that
18 renewable energy and energy efficiency, or they call
19 it demand-side control, were not considered as
20 reasonable alternatives. So they were -- they were
21 mentioned, but they were discounted as reasonable
22 alternatives, and I think there were two reasons for
23 that that are not supported, and the first is that, as
24 you just indicated, they were discussed in isolation.

25 Wind was discussed as to whether it, by

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1 itself, would be a reasonable alternative at the
2 relicensing of River Bend. Solar was discussed by
3 itself, as to whether it would be a reasonable
4 alternative. And then energy efficiency or demand-
5 side management would, by itself, be a reasonable
6 alternative.

7 But I want to be clear on our petition
8 that you have to take all of these in combination,
9 together with an adequate transmission grid, to really
10 determine whether or not renewable energy and energy
11 efficiency are reasonable alternatives. And they
12 didn't do that.

13 And as I read the ER, the main reason, at
14 least for the renewable energy alternatives -- wind
15 and solar -- for discounting those was that there is
16 no current technology for storing the energy. But,
17 again, the factual basis that we have cited
18 extensively in our petition is that you don't need
19 storage if you have a robust system of renewable
20 energy and transmission.

21 And so I think for those two reasons that
22 the discussion was not sufficient, was not the
23 rigorous discussion that is required by NEPA regarding
24 alternatives. And --

25 JUDGE HAWKENS: Are you --

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1 MR. TAYLOR: I'm sorry. Go ahead if you
2 have a question.

3 JUDGE HAWKENS: Yes. Are you familiar
4 with the Commission decisions in the Davis-Besse case
5 and the Seabrook case dealing with energy
6 alternatives?

7 MR. TAYLOR: I believe so.

8 JUDGE HAWKENS: All right. In those
9 cases, the Commission said the following. "For an
10 alternate energy source to be considered reasonable,
11 the alternative should be commercially viable and
12 technically capable of producing the requisite amount
13 of baseload power in the region of interest by the
14 time the license expires." In this case, that would
15 be 2025.

16 MR. TAYLOR: Right. Yes.

17 JUDGE HAWKENS: And it also indicated the
18 burden is on the petitioner to lay a foundation for
19 the petitioner's claim that these energy alternatives
20 could satisfy baseload demand in the region of
21 interest by the time the license expired.

22 Now, you have cited quite a number of
23 sources that indicate wind and solar have the
24 potential of producing energy in certain locations.
25 But can you point to me, say, which particular sources

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1 are most availing to you to satisfy the burden you
2 have of demonstrating that wind and solar and energy
3 efficiency could satisfy the baseload demand in the
4 region of interest by 2025?

5 MR. TAYLOR: Yes. Starting on page 10 of
6 our petition, the studies that were done by Mark
7 Jacobson and others do talk about the availability of
8 supplying the necessary power in the next few years,
9 and that was back in 2007.

10 JUDGE HAWKENS: I'm looking at page 10,
11 and which one are you talking -- the Jacobson, is this
12 the first full paragraph? Or is it --

13 MR. TAYLOR: Well, the --

14 JUDGE HAWKENS: -- the report from 2007
15 and 2009?

16 MR. TAYLOR: 2007 and 2009, and then on
17 page 11 there is a 2011 report. All of those were
18 done with the finding that renewable energy would be
19 able to supply sufficient power in the next few years.

20 JUDGE HAWKENS: Okay. Well, I -- my
21 reading of Davis-Besse and Seabrook is it has to be
22 more specific than that. It has to -- has to provide
23 some support that it will be commercially viable in
24 the region of interest to supply the required baseload
25 demand by 2025.

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1 And looking at the sites on page 10 and
2 11, I don't see that specificity. I don't see that
3 region of interest. I don't see 2025, and I don't see
4 anything about the baseload capability. It supports
5 the conclusion that there is a possibility, but the
6 Commission in Davis-Besse expressly said that the mere
7 possibility of a combination providing baseload in the
8 region of interest is insufficient. You have to
9 demonstrate the commercial viability to provide that
10 about a power.

11 MR. TAYLOR: Those reports do indicate
12 that at the time they were issued that they would be
13 -- that it could be viable within the next few years.

14 JUDGE HAWKENS: Well, again, that's a mere
15 possibility. Do they talk about the region of
16 interest? Do they talk about Louisiana?

17 MR. TAYLOR: Not specifically. That's why
18 I put in later on the information from the Louisiana
19 Department of Natural Resources or whatever they call
20 their agency there.

21 JUDGE HAWKENS: Okay. Let's -- I'd like
22 you to turn to that, please. Can you --

23 MR. TAYLOR: Sure. Just a minute.

24 JUDGE HAWKENS: -- turn the Board to the
25 page we should be looking at with you?

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1 MR. TAYLOR: You bet. It starts on
2 page 29 of my petition. A 2004 study of offshore wind
3 --

4 JUDGE HAWKENS: What -- this is a study by
5 Bryan Crouch?

6 MR. TAYLOR: Yes. And then there's
7 another study also by Crouch and another man named
8 Spreche, I guess it is, S-P-R-E-C-H-E. And it
9 indicates the progress Louisiana is making on both
10 wind and solar.

11 JUDGE HAWKENS: All right. I'm looking at
12 those, and actually I'm -- I'm looking at the first
13 study right now by Bryan Crouch.

14 MR. TAYLOR: Yes.

15 JUDGE HAWKENS: And you do indicate that
16 it talks about the potential for offshore wind
17 projects in Louisiana. But I note on page 2 of that
18 study it identifies drawbacks about high capital
19 costs, intermittency of wind, aesthetics, and bird
20 fatalities. And on page 3 of that study it says
21 Louisiana's offshore wind resource is to date still
22 somewhat unknown. And at the end of the day, it
23 simply doesn't address whether it's commercially
24 viable for offshore wind to provide baseload power in
25 Louisiana by 2025.

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1 MR. TAYLOR: Well, I think that, you know,
2 looking at the statements that are in there and the
3 progress that Louisiana has made, I think that if the
4 license to River Bend were not renewed that, you know,
5 that would ramp up the continued progress toward
6 renewable energy in Louisiana.

7 JUDGE HAWKENS: Well, you talk about the
8 progress Louisiana has made. But on 29 -- page 29 of
9 your petition, you say, "Louisiana has not thus far
10 been a leader in developing renewable energy and
11 energy efficiency."

12 MR. TAYLOR: Right.

13 JUDGE HAWKENS: So it has not made very
14 much progress thus far, and I don't see anything in
15 the 2004 Bryan Crouch study that would support the
16 conclusion that offshore wind projects could support
17 this baseload power that would be needed by 2025.

18 That's my reading. Correct me if I'm
19 wrong.

20 MR. TAYLOR: No. And the Crouch studies,
21 you know, don't say we will have sufficient power by
22 2025, but they do indicate the progress Louisiana is
23 making. And my point is that if River Bend is not --
24 license is not renewed, that would be an impetus for
25 Louisiana to continue its progress on a more rigorous

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1 scale.

2 So that's why I believe that it -- it does
3 at least present the issue in a way that provides
4 admissibility. And then at a hearing then we could
5 flesh out the details more.

6 JUDGE HAWKENS: Well, it's difficult for
7 me to see that that -- the Crouch 2004 study provides
8 an adequate foundation. It's more in the realm of
9 hypotheticals and possibilities, and, in fact, it
10 talks as much about the drawbacks as it does the
11 possibilities.

12 Does the 2005 report help you any more
13 than the 2004?

14 MR. TAYLOR: I think it just indicates the
15 further ability of Louisiana and the further progress
16 of Louisiana. And I think it does provide a more firm
17 basis than what you've indicated for the 2004 study.
18 It says, "Wind turbine capacity will become less
19 expensive as turbine efficiencies improve, and turbine
20 prices will come down. As these happen, windfarms may
21 become viable in less-than-classified wind sources --
22 wind resources," which means places like Louisiana.

23 So I think that that does provide some
24 more optimism that Louisiana can, with renewable
25 energy and energy efficiency, substitute for the power

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1 being provided by River Bend.

2 JUDGE HAWKENS: Are you aware the economic
3 analysis you're citing here was for a 50-megawatt
4 offshore windfarm?

5 MR. TAYLOR: It was offshore, yes.

6 JUDGE HAWKENS: Which is nowhere near the
7 baseload, the 967-megawatt baseload that Entergy would
8 be required to replace if the River Bend plant was not
9 renewed?

10 MR. TAYLOR: Right. That was what that
11 study was about, but it indicates that, you know,
12 certainly that can be expanded.

13 JUDGE HAWKENS: Were you aware that that
14 report also conceded that the economics of offshore
15 wind power is not well-established because the
16 offshore wind regime is still an unknown?

17 MR. TAYLOR: Yes. There are some
18 uncertainties, but certainly it seems to me that both
19 of those reports indicate optimistically that
20 Louisiana is making progress and can continue to make
21 progress toward renewable energy. That was the point
22 of those reports being entered.

23 JUDGE HAWKENS: Are those the reports you
24 would rely on most heavily? Are those the best
25 sources for you endeavoring to lay a foundation for

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1 this contention?

2 MR. TAYLOR: Yes. At this point, yes.

3 JUDGE KENNEDY: Mr. Wallace, this is Judge
4 Kennedy. I'm just curious, in the studies you have
5 been discussing with Judge Hawkens, is there any
6 projections in there of megawatt capacities from wind
7 in the timeframe we're talking about, any cost
8 estimates to replace the baseload power from River
9 Bend Station?

10 MR. TAYLOR: I don't believe so. I'd have
11 to look at the reports again, but --

12 JUDGE KENNEDY: So what would you offer up
13 to challenge Entergy's -- or the environmental
14 report's assessment of this option? I mean, this
15 sounds speculative to me. If I was an electricity
16 customer in the State of Louisiana, I'd want more
17 confidence than this. But, I mean, I'll give you an
18 opportunity to offer up what gives you the confidence
19 that this can happen.

20 MR. TAYLOR: Well, because it has been
21 done other places.

22 JUDGE KENNEDY: In this capacity?

23 MR. TAYLOR: Yes. Well, I'm from Iowa,
24 and we have very vigorously installed wind power here,
25 and solar is becoming a bigger share. But beyond

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1 that, the studies I have presented were presented
2 because they show both that renewable energy and
3 energy efficiency can, in a very short time, be the
4 supplier of all the energy we need.

5 And that's why I went into such great
6 detail and tried to present as many studies as I could
7 find to support the factual basis for this contention.
8 And, you know, nobody can say for sure how quickly
9 Louisiana will ramp up their energy renewal and energy
10 efficiency.

11 But if they know that the license for
12 River Bend will not be renewed, that is an incentive
13 to vigorously pursue renewable energy and energy
14 efficiency as a replacement. And the purpose of my
15 references that I put in the petition are to show that
16 it can be done.

17 JUDGE HAWKENS: All right. Do you have
18 anything more on Contention 2?

19 MR. TAYLOR: I don't believe so, unless
20 you have some more questions.

21 JUDGE HAWKENS: All right. Let's proceed
22 to Contention 3, please.

23 MR. TAYLOR: Okay. This has to do with
24 alkali-silica reaction that causes deterioration of
25 the concrete structures in the reactor. And there is

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1 no dispute, I don't believe, that alkali-silica
2 reaction, or ASR, is something that must be adequately
3 addressed in the license renewal application.

4 Now, Entergy claims that they did address
5 that, but if you look at it in terms of that
6 Information Notice that was sent out by the NRC
7 regarding ASR after they found a problem at Seabrook,
8 the ER in this case does not address the specific
9 concerns that were set out in that Information Notice.

10 JUDGE WARDWELL: This is Judge Wardwell.
11 Could you briefly summarize what those concerns were
12 and what the recommendations were of that Information
13 Notice?

14 MR. TAYLOR: Yes, just a minute. Let me
15 pull it out here. Yes. What the notice says is that
16 ASTM has several standards for testing aggregates
17 during construction, but ASTM issued updated standards
18 and it lists the standards. It provided guidance in
19 the appendices of two other standards. The cautions
20 that the tests described in the standards that had
21 been used may not accurately predict aggregate
22 reactivity, microcrystalline -- or reactivity when
23 dealing with late or slow, expanding aggregates
24 containing strained quartz or microcrystalline quartz.

25 Therefore, licensees that tested using

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1 ASTM C227 and ASTM C289 could have concrete that is
2 acceptable to ASR-induced degradation. And so they're
3 recommending that there be more individual inspection
4 and that it be done pursuant to updated standards.
5 And it looks to me like from reading the ER, as near
6 as you could tell, I mean, it was a very -- it seemed
7 to me a very brief discussion, and it simply referred
8 to a management plan without, you know, really
9 describing that plan.

10 And so it wasn't clear that River Bend is
11 going to comply with the recommendations in this
12 Information Notice.

13 JUDGE WARDWELL: Could you read those
14 recommendations? Not a summary of what took place
15 necessarily with the updated standards or the activity
16 that took place or concerns developed during Seabrook,
17 but just what the final recommendations are, and the
18 page number on the Information Notice where it
19 occurred.

20 MR. TAYLOR: This would be on page 4,
21 first full paragraph. I believe that would be it. It
22 says, "Once visual indications of ASR-induced concrete
23 degradation have been identified, additional actions
24 to evaluate and monitor the condition, as recommended
25 in the Federal Highway Administration report, may

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1 include confirming the presence of ASR through
2 microscopic examination of concrete cores, verifying
3 the mechanical properties through testing of concrete
4 cores, and in situ monitoring of the concrete over
5 time, such as crack mapping and monitoring of concrete
6 relative humidity.

7 "Nuclear power plant licensees may
8 consider these actions to determine the remaining
9 potential reactivity and the rate of ASR progression,
10 because safety-related structures and non-safety-
11 related structures whose failure could affect safety-
12 related structures are within the scope of the
13 maintenance rule.

14 "Licensees are required to monitor the
15 condition of the structures against licensee-
16 established goals to provide reasonable assurance that
17 the structures are capable of fulfilling their
18 intended functions. If ASR-induced degradation is
19 identified in these structures, this condition
20 monitoring would include determining the extent and
21 rate of the degradation."

22 JUDGE WARDWELL: In several of those
23 statements, I heard the word "may" a lot, and that is
24 also what I read. And it seemed to me, as I read
25 that, that those were merely statements of potential

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1 activity or potential results or potential actions
2 rather than any firm recommendation. Is my reading of
3 that correct, or do you have a different reading that
4 you would like to propose?

5 MR. TAYLOR: Well, it isn't requiring
6 other plants or other reactors to do this, but it
7 certainly seems to me that they are recommending it.
8 I mean, it could have been stronger, but it seems to
9 me they are certainly recommending it, and that any
10 other nuclear plant operator would be well-advised to
11 follow these suggestions.

12 JUDGE WARDWELL: Well, in fact, that's the
13 word I was going to use. Aren't they, at best, just
14 a suggestion? Because as soon as you read a "may,"
15 that also implies there is a may not. Isn't that
16 correct?

17 MR. TAYLOR: Well, I'm not sure in this
18 context there is. The "may not" I suppose would be
19 that, just as I said, it's not a requirement, but
20 there is a strong suggestion that they do this.

21 JUDGE WARDWELL: Thank you.

22 JUDGE KENNEDY: Mr. Wallace, this is Judge
23 Kennedy. You started your opening -- you started the
24 initial remarks on this topic with saying that the
25 Information Notice I guess -- I don't know what the

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1 right -- loss of words, but you were criticizing the
2 use of visual inspection I believe in terms of
3 detecting ASR-induced degradation.

4 MR. TAYLOR: Right.

5 JUDGE KENNEDY: Is that what you said in
6 the beginning? And then we got into this more
7 specific concern.

8 MR. TAYLOR: As I read this Information
9 Notice, it's saying that a visual inspection is not
10 necessarily enough, that you're going to need to do
11 some further testing.

12 JUDGE HAWKENS: This is Judge Hawkens.
13 Can you point in the Information Notice where it said
14 that? Because my reading is that once a visual
15 inspection detects -- detects ASR degradation, then
16 these further actions may be considered, should be
17 taken. But in the initial instance, all I see is that
18 visual inspections are required.

19 MR. TAYLOR: Yes. Visual inspections
20 would be the first line of defense, so to speak.

21 JUDGE HAWKENS: And then it's not until
22 it's detected by visual inspection that anything else
23 may be required or would be advised to be taken. Am
24 I reading that wrong? And if I am, please point it
25 out in the Information Notice where I'm reading it

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1 wrong.

2 MR. TAYLOR: Well, no, you're not
3 necessarily reading it wrong. It says visual
4 inspections of concrete can identify the unique map or
5 pattern cracking. Additional information will be --
6 okay. And then it says that then further testing
7 would be appropriate.

8 JUDGE HAWKENS: Okay. And do you have --
9 do you have any problem with that approach? Do you
10 believe that it's sufficient to wait until it's
11 observed as cracking rather than do any preemptive
12 testing beforehand that might indicate conditions that
13 are conducive for ASR?

14 MR. TAYLOR: Based on this Information
15 Notice, I have no reason to think that additional
16 testing would be required prior to visual inspection.
17 What struck me was that the Information Notice talks
18 about some standards that may have been used that this
19 Information Notice indicates would not be appropriate
20 any longer, that the situation seemed to have called
21 those into question.

22 And that was my concern about the ER in
23 this case, that there is no indication as to what
24 standards they are using or -- at least as far as I
25 could see, no -- no indication of what standards they

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1 are using in terms of the standards that are mentioned
2 in this Information Notice.

3 JUDGE HAWKENS: This is Judge Hawkens
4 again. On page 1 of your petition --

5 MR. TAYLOR: Okay.

6 JUDGE HAWKENS: -- you say the Information
7 Notice makes clear that ASR-induced degradation must
8 be considered in the context for license renewal.
9 Now, can you direct me to the page and the paragraph
10 where the Information Notice imposes that requirement?

11 MR. TAYLOR: The notice doesn't impose
12 that requirement. My intent on making that statement
13 was that the Information Notice indicates that in
14 terms of an ER I believe that that notice suggests
15 that in order for the ER to be adequate it must
16 address the concerns and the points expressed in that
17 notice.

18 JUDGE KENNEDY: Mr. Taylor, this is Judge
19 Kennedy. I mean, I guess I have a different read of
20 this. I mean, it's clear to me from the application
21 that River Bend did not use these standards. So is
22 that part of the nub of your concern in this
23 contention, that they did not use these specific
24 standards?

25 MR. TAYLOR: That's part of it, yes. And

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1 also that the -- the issue was not discussed in the
2 terms of this notice. I mean, he doesn't necessarily
3 have to mention this notice, but it wasn't discussed
4 in the context of this notice or the concerns
5 expressed in this notice. And it -- that would be our
6 -- it just referred to an aging monitoring plan that
7 wasn't really described in any detail.

8 JUDGE KENNEDY: Do you have -- this is
9 Judge Kennedy again. I guess my read of the
10 Information Notice on page 3 is pointing to non-
11 reactive aggregates are present, so that these are
12 potentially standards that could have eliminated the
13 potential for ASR degradation. Is that what you think
14 this Information Notice is stating, or do you have a
15 different read of it?

16 MR. TAYLOR: Not necessarily, and I will
17 admit that, as we go to the hearing, this is going to
18 have to be fleshed out a little more. But all I had
19 was this Information Notice in front of me.

20 JUDGE KENNEDY: I guess what I'm looking
21 at is the first sentence on page 3 under Discussion,
22 and I can't remember if you -- if you had identified
23 that sentence. And it carries on through the ASTM
24 standard.

25 MR. TAYLOR: Yeah, that's what I read

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1 earlier. Yes.

2 JUDGE KENNEDY: It points out that this
3 verified that only non-reactive aggregates are
4 present. And I don't -- I mean, I don't see where
5 Entergy is asserting that they don't have reactive
6 aggregates in their plant. So I'm not surprised, but
7 I am sensing that you're surprised that these aren't
8 identified there.

9 MR. TAYLOR: Yeah.

10 JUDGE KENNEDY: I'm trying to understand
11 if this is one of the specific concerns --

12 MR. TAYLOR: Oh, yes. Oh, yes.

13 JUDGE KENNEDY: -- that you're addressing.

14 MR. TAYLOR: Yes.

15 JUDGE KENNEDY: That you're identifying.

16 MR. TAYLOR: Yes.

17 JUDGE WARDWELL: This is Judge Wardwell
18 again. Getting back to the initial inspection, do you
19 agree that Entergy's aging management plan now is --
20 for these is -- for this aspect is now part of the --
21 or incorporated within the structure's monitoring
22 program, presented really in B.1.41 of license renewal
23 application?

24 MR. TAYLOR: They say they have an aging
25 management program. My concern was that, insofar as

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1 I could see from the application, the contours of that
2 program and specifically in the context of the
3 concerns about the ASR were not set out in -- so it
4 was hard to know, you know, if they were really
5 addressing the concerns expressed in this notice.

6 JUDGE WARDWELL: Well, didn't -- isn't the
7 first step in the structure's monitoring program a
8 visual inspection? In fact, that's what the heart of
9 it is; is it not? And that's what you were advocating
10 as the first step in this, and future steps would fall
11 from that; would it not?

12 MR. TAYLOR: Yes. But I think those
13 future steps ought to be laid out, too.

14 JUDGE WARDWELL: Okay. Thank you.

15 JUDGE KENNEDY: So do I -- this is Judge
16 Kennedy, Mr. Taylor. I take this discussion to mean
17 that Sierra Club is no longer concerned that ASR is
18 not being discussed in the license renewal
19 application, but rather that it is not adequately
20 being discussed?

21 MR. TAYLOR: Right. Right. Yes.

22 JUDGE KENNEDY: Okay. Thank you.

23 JUDGE HAWKENS: And this is Judge Hawkens.
24 I want to be clear: the burden is on you to identify
25 with specificity the deficiency. Please tell me what

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1 the deficiency is again?

2 MR. TAYLOR: The deficiency is that the
3 application does not discuss ASR in the terms that are
4 in this Information Notice, specifically with regard
5 to the standards that we have talked about, and that
6 there is nothing in the application, at least nothing
7 I could see, that indicated that the aging management
8 plan would take into consideration the concerns that
9 were expressed in that notice.

10 JUDGE HAWKENS: And those -- again, I want
11 to make sure, when you say it doesn't include the
12 standards, it doesn't include the steps Entergy should
13 take once it visually identifies ASR cracking?

14 MR. TAYLOR: No. I'm talking about the
15 ASTM standards that were mentioned on page 3 of the
16 report. As I read the report, there are some
17 standards that had been used that the Commission
18 thought were no longer adequate.

19 JUDGE KENNEDY: This is Judge Kennedy.
20 Did you look in the River Bend license renewal
21 application to see what standard Entergy has
22 identified for these materials in their station?

23 MR. TAYLOR: I looked and tried to find
24 some, but I didn't see it.

25 JUDGE KENNEDY: Well, I would agree with

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1 you I didn't see these standards in there, but they
2 have identified other standards. Again, the plan was
3 constructed I would guess at least 30 years ago. So
4 I think they have come right out and stated that they
5 did not use these standards, not in the same terms
6 that we're talking about here, but they identified a
7 different set of standards. And I guess I'm trying to
8 understand what the problem with that is.

9 MR. TAYLOR: Well, for license renewal, I
10 think they have to comply with current appropriate
11 standards.

12 JUDGE KENNEDY: Well, I mean, the plant
13 was constructed before this was ever discovered.

14 MR. TAYLOR: Yeah.

15 JUDGE KENNEDY: That's one concern I have.
16 The other is, my read of the Information Notice is
17 that these standards are a pathway to eliminating the
18 need to be concerned with the aging effect that could
19 come from ASR-induced degradation.

20 And Entergy, from what I can tell, and you
21 can -- you have an opportunity here to tell me I'm
22 wrong -- has identified in their application that they
23 will manage this -- aging effects due to this aging
24 mechanism at River Bend Station.

25 So I'm at a loss to understand why there

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1 is a significance to these standards not being
2 specifically called out in the River Bend application.
3 So I'm not sure why this is material.

4 MR. TAYLOR: As I read the Information
5 Notice, information was saying that reactors should
6 use these newer standards and base their management
7 programs on those.

8 JUDGE WARDWELL: What do you think -- this
9 is Judge Wardwell again. What do you think these
10 standards say? Are they standards in regards to
11 constructing the concrete, or are these standards of
12 what you should be doing to test to look for ASR?
13 What's your understanding of these standards?

14 MR. TAYLOR: It looks to me like they're
15 designed to predict aggregate reactivity when dealing
16 with late or slow-expanding aggregates containing
17 strained quartz or microcrystalline quartz. So they
18 are standards that are used, as I understand it -- and
19 I'm not an engineer -- to predict, you know, whether
20 or not there is a problem with ASR.

21 JUDGE HAWKENS: This is Judge Hawkens. I
22 think you're correct, but look at the first sentence.
23 These are standards for testing during construction.

24 MR. TAYLOR: Yeah.

25 JUDGE HAWKENS: That was over 20 years

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1 ago. We're well beyond that. So it seems to me those
2 standards can't be applied at this point, and Entergy
3 has recognized that, and, therefore, they have
4 included in their aging management plan visual
5 inspections to identify this problem if it occurs.

6 MR. TAYLOR: But Seabrook had been
7 constructed, too, and they're still, it looks like,
8 applying it to Seabrook, as I am understanding it.

9 JUDGE HAWKENS: And show me in the
10 Information Notice where you're drawing that
11 conclusion.

12 MR. TAYLOR: Well, this Information Notice
13 arose because of the finding of ASR at Seabrook, and
14 that's what was the impetus for this notice in the
15 first place.

16 JUDGE HAWKENS: But that paragraph that
17 you provided us with the block quote of says these are
18 standards which should be used or have been used
19 during construction. Based on what occurred at
20 Seabrook, we have determined that certain of these
21 standards should no longer be used. And if they have
22 been used, then the plant operators should be aware
23 that ASR degradation can occur. That's how I read
24 that block paragraph.

25 JUDGE KENNEDY: This is Judge Kennedy. If

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1 you go to the top of the page, it discusses
2 specifically that Seabrook Station have tested their
3 concrete using ASTM C289, which is one of the ones
4 that is being called out here that needs to be
5 updated. So I think this whole thing sort of, in my
6 mind, knits together -- and I'm looking for the
7 problem here.

8 Seabrook used the wrong standard when they
9 tested their concrete. So they didn't expect this
10 degradation and it occurred. As I read it, River Bend
11 Station is acknowledging they didn't test to this
12 current standard, and so they are going to continue to
13 look for ASR degradation using visual inspection and
14 the aging management program in the application.

15 So I'm really struggling with trying to
16 understand where Sierra Club sees the issue here, what
17 the specific concern is of why it's important to bring
18 it up to the staff.

19 MR. TAYLOR: Well, just to say again I
20 guess that I was concerned that the license
21 application in this case for River Bend did not
22 address ASR as suggested by this Information Notice.
23 And I didn't see in the application that there was
24 anything in the aging management plan that would
25 address the process, I guess you'd call it, that is

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1 being suggested in this notice.

2 JUDGE KENNEDY: Do your concerns extend
3 beyond these ASTM standards? Or is that the specific
4 issue that Sierra Club is concerned with?

5 MR. TAYLOR: Well, the specific issue is
6 that I didn't see any indication of how we were going
7 to address the issue of ASR in the aging management
8 plan.

9 JUDGE KENNEDY: Beyond visual inspection.

10 MR. TAYLOR: Yeah. And I just felt that
11 these -- these standards at least were something that
12 should at least be alluded to in the application as to
13 how they were going to further test.

14 JUDGE KENNEDY: But the plant has been
15 constructed. These are --

16 MR. TAYLOR: Yes.

17 JUDGE KENNEDY: -- construction testing
18 methods.

19 MR. TAYLOR: Yeah, I understand.

20 JUDGE KENNEDY: I mean, if they used those
21 standards, they could acknowledge that. But my read
22 is they are -- they are telling us straight up they
23 didn't use them.

24 Okay. I mean, I guess -- I guess we came
25 back around to the circle.

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1 JUDGE HAWKENS: Any final comments on
2 Contention 3, Mr. Taylor?

3 MR. TAYLOR: No, thank you.

4 JUDGE HAWKENS: All right. You've
5 actually exceeded the 45 minutes and the additional
6 rebuttal time, but we will provide you with some
7 modest amount of rebuttal time.

8 MR. TAYLOR: All right.

9 JUDGE HAWKENS: Mr. Burdick, you may
10 proceed.

11 MR. BURDICK: Thank you, Your Honor. I'd
12 like to first address one overarching issue that cuts
13 across all three contentions, and then if possible, I
14 will try to address a few of the arguments that we
15 just heard.

16 The Sierra Club's hearing request must be
17 rejected because -- for not including an admissible
18 contention. Each of Sierra Club's three contentions
19 is inadmissible for multiple independent failures to
20 comply with the Commission's contention admissibility
21 requirements in Section 2.309(f).

22 But one significant deficiency that does
23 cut across all three contentions was Sierra Club
24 ignoring information in the application that addresses
25 the very issues raised in the contentions.

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1 Contention 1 claimed that the statement of
2 purpose and need was so narrow that only the proposed
3 action would satisfy it, but that ignores the detailed
4 information in the environmental report that
5 identifies 18 energy alternatives that were
6 considered, including four determined to be reasonable
7 alternatives.

8 Indeed, even wind and solar, although
9 concluded to not be reasonable, they were examined in
10 detail as if they were reasonable with a comparison of
11 their environmental impacts against proposed action.

12 Contention 2 claimed to challenge the
13 consideration of renewable energy and energy
14 efficiency as alternatives, but that ignored the
15 relevant portions of the environmental report that
16 addressed consideration of alternatives, including
17 environmental report Section 2.6, Chapter 7 and
18 Chapter 8.

19 Those sections considered wind, solar, and
20 energy efficiency, and also a combination of
21 alternatives that included a renewable energy source
22 and demand-side management, which includes energy
23 efficiency.

24 Contention 3 claimed that the application
25 did not address alkali-silica reaction degradation.

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1 JUDGE HAWKENS: Mr. Burdick, Judge Hawkens
2 here. The ER did not consider renewables in
3 combination; did not?

4 MR. BURDICK: Yes, Your Honor. In
5 environmental report Section 7.1.1.4, the combination
6 of alternatives is presented. That combination
7 includes three different energy sources. It includes
8 demand-side management of 105 megawatts, which
9 includes energy efficiency. But it also includes
10 biomass units which are considered renewable.
11 Although they're not wind and solar, they are a
12 renewable source, and that's even considered renewable
13 in the State of Louisiana for Entergy's integrated
14 resource plan. And the remainder of that is natural
15 gas to ensure that it can provide baseload power here.

16 JUDGE HAWKENS: It did not, though,
17 consider solar and wind in combination; did it?

18 MR. BURDICK: It did not in the Section
19 7.1.1.4 combination of alternatives. And the National
20 Energy Policy Act -- National Environmental Policy
21 Act, or NEPA, it only requires us to look at
22 reasonable alternatives, and here Entergy, you know,
23 under the rule of reason established, you know, one
24 combination of alternatives that was reasonable.

25 And I think what's important here is if

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1 wind or solar or wind and solar were combined or were
2 put into this combination of alternatives, it would
3 not have a different outcome. The biomass units
4 themselves, assuming a sufficient fuel source, can
5 function as a baseload power unit. If we were to
6 replace that with wind and solar, then that would not
7 necessarily provide baseload power, and so you would
8 have to increase the amount of natural gas.

9 And as the Board alluded to earlier, there
10 is Commission case law that specifically allows for
11 the consideration of baseload power when determining
12 reasonable alternatives.

13 The point I wanted to make that's
14 overarching here with Contention 3, it's the same
15 thing as test omission. As we've pointed out and it
16 has been discussed, there is information in the
17 application. And for all three of these contentions
18 they just missed information in the application.

19 And the Commission has made it very clear
20 that contentions that do not address the contents of
21 an application on a challenge topic are inadmissible.
22 And even Section 2.209(f)(1)(6) likewise states the
23 contention "must include references to specific
24 portions of the application, including the applicant's
25 environmental report and safety report, that the

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1 Petitioner disputes and its supporting reasons for
2 each dispute."

3 That has not been done here, and so our
4 view is, because they failed to do that, all the
5 previous contentions are inadmissible at the outset.

6 Let me turn to Contention 1 and just
7 address a couple of points I heard in the earlier
8 discussions.

9 JUDGE HAWKENS: Mr. Burdick, Judge Hawkens
10 here again. Before you --

11 MR. BURDICK: Sure.

12 JUDGE HAWKENS: -- contention, can we go
13 back to standing? And I know you're not challenging
14 standing in this case, correct?

15 MR. BURDICK: That's correct, Your Honor.

16 JUDGE HAWKENS: You can see that standing
17 does exist.

18 MR. BURDICK: Yes, Your Honor. We do not
19 oppose standing here.

20 JUDGE HAWKENS: Okay. And is my research
21 correct that the Commission has not yet squarely held
22 that the 50-mile proximity presumption does apply in
23 license renewal cases?

24 MR. BURDICK: To the best of my knowledge,
25 the Commission has never ruled directly on that. But

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1 as you noted earlier, licensing boards have taken that
2 position.

3 JUDGE HAWKENS: Okay. Thank you.

4 MR. BURDICK: So just briefly on
5 Contention 1, this relates to the statement of purpose
6 and need. I think there has been some confusion on
7 exactly how the statement of purpose and need should
8 be interpreted here, and hopefully I can help to
9 clarify that. As stated in environmental report
10 Section 1.0, the purpose and need for the proposed
11 action is to provide an option that allows for
12 baseload power generation capability beyond the term
13 of the current nuclear power plant operating license
14 to meet future system generating needs.

15 What I heard in the discussion is some
16 confusion about the phrase "the term of the current
17 nuclear power plant operating license." That does not
18 mean that only nuclear power can satisfy the statement
19 of purpose and need. That's a timing issue that we
20 are talking about whether the generating needs will be
21 available when the River Bend operating license is
22 done, which here it's in 2025, if the license is not
23 renewed.

24 So hopefully that provides some
25 clarification. But as the Board had discussed

1 earlier, you know, certainly our environmental report
2 doesn't identify only one reasonable alternative. We
3 identify many more than that.

4 Turning I guess to Contention 2 --

5 JUDGE HAWKENS: Mr. Burdick, Judge Hawkens
6 here again. Can you address Sierra Club's argument
7 regarding advocacy of the NRC's duty under NEPA?

8 MR. BURDICK: Certainly. I think that's
9 also a misreading of the statement of purpose and need
10 and is an unsupported statement. There has been no
11 advocacy here. As I just read, and I won't read it
12 again, you know, certainly the statement of purpose
13 and need is to provide this option. It's not an
14 advocacy.

15 What is retained for other energy planning
16 decisionmakers is what the actual energy source will
17 be that is constructed or continued in the region.
18 And that, as we point out in our answer, is
19 appropriate for other agencies or other bodies.
20 That's not within the jurisdiction of the NRC.

21 And we point to some of the rulemaking
22 history when the NRC revised Part 51 to address NEPA,
23 and they certainly -- the statements in that
24 rulemaking uphold this issue that it's not within the
25 jurisdiction of the NRC to make these decisions about

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1 exactly what should be constructed.

2 And I think, importantly, you know, NEPA
3 and the implementing regulations do not impose that
4 requirement. And here we have a very interesting
5 situation with the statement of purpose and need
6 because it's not one that Entergy just formulated on
7 its own. As the Petitioner notes, this comes from
8 guidance, but it's not just the guidance. It also
9 comes from the rulemaking history.

10 And as we point out in our answer, this
11 concept of preserving the option for future energy
12 planning decisionmakers is actually codified in the
13 rules themselves, and we identify a few of those
14 sections. And so it's really the Commission's
15 statement of purpose and need of what must be done
16 here. And for them to challenge it here is an
17 improper challenge to the rule, contrary to 10 CFR
18 Section 2.335.

19 The other issue that came up was the
20 concept of baseload power. And, you know, our view,
21 as we do discuss in our answer some, but I think some
22 of this also responds to the newer reply arguments, is
23 the Sierra Club has not provided any support that the
24 renewable sources that they are discussing in
25 Contention 2 can provide baseload power.

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1 There are only two places in their
2 proposed contentions in which they identify or mention
3 baseload. The first I will mention is on pages 21 and
4 22 of Contention 2, and there the Petitioner is not
5 stating that they have demonstrated that wind and
6 solar can provide baseload. Instead, they are
7 complaining about using the standard of baseload in
8 these energy alternatives. So they are actually
9 almost competing here, that wind and solar don't
10 provide that.

11 The other place they mention it is on
12 page 10 of their Contention 2. And this is in a
13 simple statement that is introducing this report from
14 Christina Archer and Mark Jacobson, which was already
15 discussed here.

16 But that document also does not support
17 baseload power from wind and solar. In fact, as we
18 pointed out in our answer, the Commission had
19 evaluated this exact report in the Davis-Besse
20 proceeding and rejected it as providing a basis for
21 wind and solar providing baseload power. And so that
22 certainly can't support baseload.

23 This report also is -- doesn't demonstrate
24 that it's technically feasible or commercially
25 available. In fact, the Commission explained in the

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1 Davis-Besse decision that this document refers to it
2 as an idea to use interconnected windfarms. And so
3 it's not even a solid plan here.

4 Additionally, the report itself does not
5 appear to even increase the capacity factor very high,
6 and so it's arguably not even baseload. I think the
7 report -- still, the maximum is less than 50 percent.
8 And for a lot of the reports that identified in
9 Contention 2, these are not discreet opportunities to
10 replace River Bend. Instead, they are overarching
11 changes to the energy infrastructure and to energy
12 policy that are simply not a reasonable alternative
13 here.

14 We also pointed out that some of this --
15 much of proposed Contention 2 is copied from a Turkey
16 Point new reactor proceeding. That, in and of itself,
17 could be okay, but here it was not. It brings a lot
18 of arguments that are simply irrelevant or outside
19 scope. And combining that action with the failure to
20 actually address what is in the environment report
21 itself, simply there is no genuine dispute here.

22 And, again, these are full of policy
23 arguments rather than technical arguments. Most don't
24 address baseload sources, and they are never tied to
25 River Bend or Louisiana, and some don't even discuss

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1 nuclear. And, in fact, some of these sources even
2 discuss changes that would not be implemented until
3 after the period of extended -- period of extended
4 operation. I believe one report talks about 2050, so
5 that's even past the renewed period.

6 JUDGE HAWKENS: Mr. Burdick, Judge Hawkens
7 here. Can you address the two reports, the studies on
8 pages 29 and 30 of the opening petition? Those were
9 related specifically to Louisiana and Sierra Club.
10 You seem to have placed a high reliance on them,
11 saying that they were -- should be given weight and
12 laying a foundation for finding that renewables and
13 energy efficiency are a reasonable alternative.

14 MR. BURDICK: Yes, Your Honor. We
15 reviewed these studies, and they certainly don't
16 support that conclusion. They are older studies.
17 They don't mention baseload. They are focused on just
18 the potential for wind and solar, but certainly not
19 only a scale that could replace River Bend.

20 They are speculating about what could be
21 done in the future. I believe I heard counsel for
22 Sierra Club talk about how no one can say whether wind
23 and solar can be done in this manner, and it's really
24 just a lot of speculation. And I also would point out
25 that we actually have more detailed information in our

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1 environmental report.

2 And environmental report Section 7.1.2.2.1
3 for wind power, and Section 7.1.2.2.2 for solar power,
4 have more recent data and fully evaluate this. And so
5 there is really no genuine dispute here, and this
6 information in these sections I just mentioned has not
7 been challenged by the Petitioner and certainly not in
8 the original contention.

9 And these walk through wind and solar in
10 great detail. And as I mentioned earlier, I think
11 what is really important about these two sections is
12 not only do they look at wind and whether it's viable
13 and whether they are sufficient, they also look at
14 energy storage. And they conclude that there is not
15 a basis for these to be reasonable alternatives.

16 But the last paragraph in each of these
17 sections is very clear. For example, in Section
18 7.1.1.2.1, it says, "Nonetheless, even if wind were
19 considered to be reasonable, the impacts discussed
20 above show that the impacts from winds -- from wind,
21 with or without compressor energy source, would be
22 higher than the impacts for renewal of the River Bend
23 license, and so forth.

24 So in those sections, they look at some of
25 the environmental impacts; for example, the high land

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1 use for wind that would be on the scale to replace
2 River Bend, and some with solar. And so they have
3 actually, in a sense, conservatively considered that
4 they -- if they were reasonable, here is the
5 evaluation. And so Entergy has gone well beyond what
6 was required.

7 And, in fact, the section on wind even
8 talks about offshore wind, which is in some of these
9 Louisiana documents, and says that the NRC determined
10 Louisiana's offshore areas had the lowest
11 classification for potential wind energy development,
12 and that's also in the generic environmental impact
13 statement.

14 Your Honor, I guess turning to
15 Contention 3, then, I did want to make a clarification
16 here. The discussion -- the information we agree
17 with, the Information Notice is not a requirement.
18 It's not even a recommendation. As stated on the
19 first page, it's suggestions. And licensees do take
20 these seriously. They evaluate them.

21 River Bend has evaluated the Information
22 Notice, and that has led to -- to what is in the
23 license renewal application. The discussion I think
24 is important. The Information Notice does not require
25 that River Bend put a lot of details as to what would

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1 happen if there is ASR degradation, but the
2 Information Notice on page 2 of 5 talks about that ASR
3 can be identified as the likely cause of degradation
4 during visual inspection.

5 And then, also on page 4 of 5, as was
6 already read here, once visual indications of ASR-
7 induced concrete degradations have been identified,
8 those visual indications, consistent with the
9 Information Notice, which is the only support that has
10 been identified by the Petitioner, you first start
11 with visual inspections, and that is exactly what
12 Entergy has done in the license renewal application.
13 It points to the discussion, and Section 3.5 points to
14 the structures monitoring program, and that requires
15 visual inspections.

16 JUDGE WARDWELL: Mr. Burdick, this is
17 Judge Wardwell. Is there anything in your aging
18 management plan for what to do if, in fact, you do
19 observe cracking associating with ASR?

20 MR. BURDICK: Your Honor, under the
21 structures monitoring program, the aging effects of
22 cracking are identified. Then Entergy would put that
23 information into their corrective action program, and
24 then would have to evaluate it and take actions, and
25 certainly they would consider things such as what has

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1 been presented in the Information Notice or suggested
2 in the Information Notice.

3 JUDGE WARDWELL: And has this -- could you
4 point us to where that is stated? And where is the
5 applicability or the relevance to the ASR phenomena?
6 Especially as identified in Seabrook.

7 MR. BURDICK: Your Honor, if I understood
8 correctly, you're asking about the structures
9 monitoring program and the corrective action?

10 JUDGE WARDWELL: Yeah. Where in that
11 construction -- where in the structures monitoring
12 plan -- and are we speaking of B-1.41, pages 146 to
13 140 -- well, it may go further than that. I don't
14 know exact page numbers.

15 MR. BURDICK: Yes, Your Honor. That is
16 the correct structures monitoring program.

17 JUDGE WARDWELL: And if you look at that,
18 where in there does it say anything in what to do
19 after you observe cracking associated specifically
20 with ASR in order to address that particular issue and
21 the impacts on the operation of the plant?

22 MR. BURDICK: Yes, Your Honor. So at that
23 point, the structures monitoring program specifies,
24 you know, on page B-1.45, the visual inspection, and -

25 -

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1 JUDGE WARDWELL: Bear with me while we get
2 that. Hang on just a second. What number did you say
3 again?

4 MR. BURDICK: Your Honor, just at the
5 beginning, so page B-145. I'm just pointing -- that
6 talks about the visual inspection, but I'm getting a
7 citation for you for the reference to the corrective
8 action program.

9 JUDGE WARDWELL: This structures
10 monitoring, is this program -- B-1.41, as I read this
11 from your license renewal application, wasn't -- where
12 does it include specific stuff associated with the
13 ASR, not just general -- generic information relating
14 to concrete structures?

15 MR. BURDICK: Your Honor, the specific
16 structures monitoring program does not call out ASR
17 specifically. Where the connection is is in
18 Section 3.5 of the license renewal application, and so
19 the structures monitoring program is broader and
20 covers not just ASR but covers other -- you know,
21 managing other aging effects.

22 JUDGE WARDWELL: And where do we see that,
23 then, in 3.5?

24 MR. BURDICK: That's correct.

25 JUDGE WARDWELL: No. I said point us to

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1 where in 3.5 --

2 MR. BURDICK: I'm sorry. I misunderstood.

3 JUDGE WARDWELL: -- in your submittals
4 that you talk about 3.5.2.2.1.8 and you've talked
5 about 3.5.2.2.1, Item 2, and you've also referenced
6 3.5.2.2.3, Item 2. Could you direct me into those
7 sections on where there is some specificity related to
8 ASR types of actions that have been generated as a
9 result of the Seabrook concerns?

10 MR. BURDICK: Yes, Your Honor. So in the
11 three sections that you have just identified, and each
12 of those sections covers a different type of concrete
13 structure, but all of them deal with reaction with
14 aggregates, as we explain, includes alkali-silica
15 reactions. Those sections, then, point to the
16 structures monitoring program.

17 JUDGE WARDWELL: Where is it -- well, now
18 we're coming full circle I thought. Give me some
19 paragraphs within those sections where you're saying
20 where that is pointing and how that is doing it
21 regards to addressing this concern.

22 MR. BURDICK: Okay. Your Honor, I am
23 starting on Section 3.5.2.2.1.8.

24 JUDGE WARDWELL: Okay.

25 MR. BURDICK: And this is on page 3.5-11.

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1 And so this section entitled Cracking Due to Expansion
2 with Reaction for Aggregate, and towards the bottom of
3 the first paragraph it says, "Based on ongoing
4 industry operating experience," which would include
5 things such as the Information Notice and what
6 occurred at Seabrook, "the structures monitoring
7 program manages cracking" --

8 JUDGE WARDWELL: Wait a minute. Your
9 pause there wasn't -- was your comment, right? It
10 wasn't -- that's not written here, correct?

11 MR. BURDICK: That's correct. I was
12 explaining what the industry operating experience was.
13 Let me start over without the commentary. So this
14 sentence says, "Based on ongoing industry operating
15 experience, the structures monitoring program manages
16 cracking due to expansion from reaction with aggregate
17 in accessible concrete areas for the RBS concrete base
18 foundation."

19 So for that structure, this points to the
20 structures monitoring program, and then that's when we
21 would turn to Appendix B. And what we had discussed
22 there, the beginning of Appendix B, the beginning of
23 -- so now I'm in Section B.1.41. In paragraph 2, for
24 example, there is a statement that the structure and
25 structural components are inspected by qualified

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1 personnel. And then concrete structures are inspected
2 for indications of deterioration and distress."

3 And so now we are in the structures
4 monitoring program that includes the inspections. And
5 if any indications that could be alkali-silica
6 reaction are identified, consistent with what is
7 discussed in the Information Notice, then that
8 identification would be placed into Entergy's
9 corrective action program, and that would determine
10 what the next steps are through evaluation.

11 JUDGE WARDWELL: Have these -- well, never
12 mind. Strike my thought, okay?

13 MR. BURDICK: Okay.

14 JUDGE KENNEDY: This is Judge Kennedy. Is
15 there criteria based -- so you do the inspections, and
16 then there is -- must be criteria that guides these
17 inspections. And does the failure of -- if the
18 inspection detects something out of the bounds of the
19 criteria, is that how you get to the corrective action
20 program? I'm trying to -- I guess I'm picking up on
21 Judge Wardwell's thoughts of how the dots get
22 connected.

23 MR. BURDICK: Yes. So the inspectors
24 would be trained for -- to perform these inspections,
25 and their procedures would have some indications of,

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1 you know, if you see this type of cracking, which is
2 discussed in the Information Notice, then they would
3 put in the corrective action to determine it further.

4 JUDGE KENNEDY: But none of that is stated
5 in the aging management program.

6 MR. BURDICK: That's correct. That level
7 of detail is not in here. And I think part of the
8 reason is the structures monitoring program is not
9 just for alkali-silica reaction; it's for these
10 inspections of all types of potential cracking. And
11 under the license renewal --

12 JUDGE WARDWELL: Excuse me. Can I
13 interrupt there? Just because I don't want to lose
14 that thought. So you're saying that there is no
15 specificity here in this structures monitoring report
16 related to ASR reactions.

17 MR. BURDICK: Well, I would say there is
18 adequate specificity in the structures monitoring
19 program. And, you know, under the license renewal
20 process, the licensees, they inspect for the aging
21 effects. And so it's not necessarily looking at
22 specific mechanisms. It's looking at the effects that
23 could have various mechanisms.

24 And then it is only if -- if you identify
25 those aging effects, then you determine what the next

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1 steps are, and that would be in more detailed
2 procedures.

3 JUDGE WARDWELL: But some of these, the
4 cracking that you are going to observe due to the
5 structures monitoring, they might not -- it might be
6 observed by the structures monitoring, can occur from
7 a number of processes, not just ASR, as you have
8 mentioned. But ASR does have a distinctive pattern;
9 is that not correct?

10 MR. BURDICK: Yes. We took --

11 JUDGE WARDWELL: You would suspect that it
12 is ASR that is causing this; is that correct?

13 MR. BURDICK: Yes, Your Honor. You know,
14 based on -- as explained in the Information Notice,
15 there is certain patterns of cracking, and so that
16 could give an indication of --

17 JUDGE WARDWELL: Then that would lead you
18 down a different path of corrective actions, wouldn't
19 it, than if this cracking looked like it came from
20 free saw, for instance?

21 MR. BURDICK: Yes, that's correct.

22 JUDGE WARDWELL: And so where is that laid
23 out in your program that tells someone, oh, yeah, I
24 see where there -- I see how this is managed? I mean,
25 because that --

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1 MR. BURDICK: Yes, Your Honor.

2 JUDGE WARDWELL: -- is not adequately
3 described as an ASR program to manage it. And so if
4 that's where it's going to go once it's observed,
5 where do we see that in your aging management program?

6 MR. BURDICK: So, Your Honor, going back
7 to -- I think cuts across some of these questions. As
8 we said, the aging management program is in B-141, and
9 that aging management program, as discussed, is
10 consistent with the generic aging lessons learned or
11 GALL report. And that is on page B-146. And so there
12 are more details in the GALL reports that are part of
13 this program that are incorporated here.

14 JUDGE WARDWELL: Which version of GALL are
15 you referring to?

16 MR. BURDICK: So I'm in NUREG-1801,
17 Revision 2.

18 JUDGE WARDWELL: Okay. And wasn't that
19 written before Seabrook even came into concern --

20 MR. BURDICK: Yes, it was from December
21 2010.

22 JUDGE WARDWELL: Or, at that point, any of
23 the lessons learned or information that has been
24 gathered or generated from Seabrook investigations and
25 information; is that correct?

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1 MR. BURDICK: One second, Your Honor.

2 (Pause.)

3 MR. BURDICK: Your Honor, so in the GALL
4 report, and the reference here in NUREG-1801 Rev 2 is
5 to Section -- it's Roman eleven F6 for structures
6 monitoring. That includes I think two provisions that
7 I want to --

8 JUDGE WARDWELL: Bear with me while I get
9 it. Okay. I am with you. You are on S2?

10 MR. BURDICK: On -- so I'm on page Roman
11 eleven. F6-4 is the page.

12 JUDGE WARDWELL: Okay.

13 MR. BURDICK: So this -- the aging
14 management program is consistent with the GALL and
15 incorporates these aspects of the GALL.

16 So two points. Item 7 is corrective
17 actions, and that discusses evaluation performed for
18 any inspection results that do not satisfy the
19 established criteria. Corrective actions are
20 initiated according to the --

21 JUDGE WARDWELL: You said established
22 criteria.

23 MR. BURDICK: -- if the results indicate
24 there is a need for repair or replacement.

25 And so the second point, though, is

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1 Item 10 on operating experience. And that does
2 require licensees to continue to review operating
3 experience as part of that program, and that would
4 include things like Seabrook and this Information
5 Notice.

6 JUDGE KENNEDY: Mr. Burdick, I'm not sure
7 you heard one of Judge Wardwell's questions, and that
8 was, where are the acceptance criteria for the
9 inspection?

10 JUDGE WARDWELL: Under the corrective
11 actions, you say, "Evaluations are performed for any
12 inspection results that do not satisfy established
13 criteria." Where is the criteria when you see
14 cracking due to ASR?

15 MR. BURDICK: Yes. So here the acceptance
16 criteria would be in the detailed procedures, and then
17 that would -- you know, if those procedures determined
18 there was, you know, some level of cracking, then that
19 would go to this Item 7, corrective actions, put in
20 the corrective action program where it would be
21 evaluated for the next steps.

22 JUDGE WARDWELL: And, again, both 7 and 10
23 were written without any knowledge of Seabrook
24 existence, correct?

25 MR. BURDICK: Yeah. But the -- yes, Your

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1 Honor. Item 10, though, deals with operating
2 experience, and that continues and requires an ongoing
3 review of that operating experience, which would
4 include things like Seabrook, and so -- or going into
5 the future. And so, you know, the fact that the GALL
6 report was from December 2010 before Seabrook doesn't
7 matter.

8 So this is a living document, and we
9 believe the structures monitoring program,
10 particularly here --

11 JUDGE WARDWELL: I would argue it's a dead
12 document because it's so generic it just applies to
13 anything, and you could take this same thing and apply
14 it to any other structure that wasn't even a power
15 plant. And it's so general, it just tells you how
16 just basic, good engineering and monitoring of
17 engineering facilities might be handled with no
18 specificity.

19 MR. BURDICK: Your Honor, I respectfully
20 disagree. This item here on operating experience is
21 taken very seriously. In fact, the Information Notice
22 that we're talking about was put into the corrective
23 action plan and was evaluated as operating experience
24 not just for license renewal but for the continued
25 operation of plants for their inspections under the

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1 maintenance rule, and this really continues those
2 activities.

3 And this operating experience item is a
4 key part of license renewal and makes this a living
5 program.

6 JUDGE WARDWELL: Okay. Thank you.

7 MR. BURDICK: Your Honor, I wanted to just
8 correct one thing on the record. We've had a lot of
9 discussion about the standards, and it was correctly
10 pointed out that the standards that are discussed in
11 the Information Notice are standards that were used at
12 the time of construction. So they're not actively
13 used right now.

14 But similar to other plants that were
15 constructed during that time period, River Bend did
16 use some of these standards, including C289 and C295.
17 Again, as explained in the Information Notice, that
18 doesn't mean there is a concern here, doesn't mean
19 there is alkali-silica reaction. It just means for
20 this one type of late or still-expanding alkali-silica
21 reaction it may not have been picked up by that test.

22 So per the Information Notice, as we have
23 been talking about, we are doing these visual
24 inspections to address any aging effects of alkali-
25 silica reactions.

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1 JUDGE WARDWELL: Mr. Burdick, I just have
2 two quick follow-up questions, just more of a
3 curiosity in reviewing the material. In the aging
4 management program structures monitoring, it calls out
5 a number of enhancements. Are any of those
6 enhancements related to ASR-induced degradation that
7 you're aware of?

8 MR. BURDICK: Not that we're aware of,
9 Your Honor.

10 JUDGE WARDWELL: That's fair. And just
11 one other sort of curiosity question. In those 3.5
12 sections that your answer refers to, I think the
13 category of structures, of inaccessible concrete
14 structures, and I guess I'm curious, what are
15 inaccessible concrete structures? And then how do you
16 do visual inspections if they are inaccessible?

17 MR. BURDICK: Some of the inaccessible
18 areas could be, if it's a high radiation area, or if
19 it's below grade, you know, so those are some
20 examples.

21 JUDGE WARDWELL: Okay. So how are you
22 going to inspect if it's below grade?

23 MR. BURDICK: The structures monitoring
24 program is similar to the maintenance rule that's used
25 at all the plants. If it's an accessible area, then

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1 it's inspected at a specific periodicity. For
2 inaccessible areas, there are opportunistic
3 inspections, and also evaluations to try to consider,
4 you know, what the impact of inspections on accessible
5 areas mean for inaccessible areas.

6 JUDGE HAWKENS: Judge Hawkens here. Mr.
7 Burdick, do you have anything else? Your time has
8 expired.

9 MR. BURDICK: Your Honor, just to
10 reiterate the first point that the original hearing
11 request missed much information in the application,
12 and that alone should be enough to reject these
13 contentions. But even if the information is
14 considered, they don't satisfy the conditions in the
15 Commission's contention as to builder requirements.

16 Thank you.

17 JUDGE HAWKENS: All right. Thank you.

18 NRC staff, we'll be hearing from you next.
19 If nobody objects, I propose we take a five-minute
20 break and return at quarter 'til. Any objection,
21 Sierra Club?

22 MR. TAYLOR: No.

23 JUDGE HAWKENS: Entergy?

24 MR. BURDICK: No objection.

25 JUDGE HAWKENS: NRC staff?

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1 MR. TURK: No objection, Your Honor.

2 JUDGE HAWKENS: All right. I'll put you
3 all on hold, and we will resume at quarter 'til.
4 Thank you.

5 (Whereupon, the above-entitled matter went
6 off the record at 3:39 p.m. and resumed at 3:47 p.m.)

7 JUDGE HAWKENS: Let's go back on the
8 record. Let me confirm that our other players are
9 still on the line. Sierra Club?

10 MR. TAYLOR: Yes.

11 JUDGE HAWKENS: Entergy?

12 MR. BURDICK: Yes, Your Honor.

13 JUDGE HAWKENS: And NRC staff?

14 MR. TURK: Yes, Your Honor.

15 JUDGE HAWKENS: All right. Mr. Turk, I
16 think you indicated you wanted to make a brief
17 introduction before turning it over to Mr. Roth?

18 MR. TURK: Yes. That's correct, Your
19 Honor.

20 JUDGE HAWKENS: Please proceed.

21 MR. TURK: Thank you, Your Honor, and
22 Judges Kennedy and Wardwell. My name is Sherwin Turk.
23 I have had the pleasure of appearing before two of you
24 in the past, in the Indian Point proceeding in
25 particular.

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1 I'll be very brief because I know the
2 questions that you have pertain primarily to the
3 contentions. The staff does not contest standing for
4 the Sierra Club. We state so in our brief
5 excessively.

6 And, Your Honor, I'd like to address the
7 question that you've asked other parties about the --
8 whether the Commission has ruled directly on the
9 question of proximity presumption of fines in a
10 license renewal proceeding. The only case that we
11 could find was the decision that we cited at page 5 of
12 our response to petition. That's the Calvert Cliffs
13 decision in which the Commission took note of a board
14 decision in which the proximity presumption had been
15 applied in license renewal.

16 So we could find no case in which the
17 Commission has explicitly ruled itself. We do
18 believe, however, that the Commission's citation of
19 that case was a citation with approval. So we are led
20 to believe that the Commission has at least implicitly
21 endorsed that concept.

22 Your Honor, we do not oppose standing, but
23 we do oppose the admission of the contentions for the
24 principal reason that the petition to intervene did
25 not contain the specificity that is required under the

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1 Commission's regulations. And as stated in our brief,
2 the Commission's regulations governing the
3 admissibility of contentions are strict, and they are
4 strict by design.

5 I won't address the specifics of each
6 contention, but I would note that the rules governing
7 contention admissibility would lead us to conclude
8 that the contentions must be rejected for failing to
9 meet the criteria of 2.309(f).

10 And, Your Honor, with that, I will turn
11 over the podium to Mr. Roth, who will speak on the
12 environmental contentions, and he will be followed by
13 Mr. Gillespie on Contention 3 dealing with the safety
14 issues.

15 JUDGE HAWKENS: Thank you, Mr. Turk.

16 Please proceed, Mr. Roth.

17 MR. ROTH: Thank you, Your Honors. Very
18 briefly, concerning Contention 1, as the staff
19 discussed in its written pleadings, this appears to be
20 a challenge to the Commission's rules governing
21 licensing renewal application. I would like to point
22 out the specific rule is that the staff document,
23 because it's to the ER, that the staff's final
24 document is a supplemental environment --
25 environmental impact statement supplementing the

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1 guidance.

2 The guidance already has the specific
3 relief to develop through rulemaking. And the staff
4 supplement is not going to use an alternative purpose.
5 This could be confirmed through both looking at the
6 staff's environmental standard review plan, as well as
7 the ESRP NUREG-1555 Supplement 1, Section 1.0, purpose
8 of reactions, this is tabbed evaluation findings,
9 noting that the findings -- the purpose and need
10 should be that purpose and need that is in Section 1.3
11 of the guidance.

12 In terms of guidance on how the ER should
13 be drafted, the standard format with preparation of
14 environmental report for nuclear power plant license
15 renewal applications, which is Regulatory Guide 4.2
16 Supplement 1. Likewise, echoes what the ER should say
17 within the guidance.

18 Turning to the issue of what the
19 Intervenor would need to challenge these rules, this
20 again is explained as written, stating this is
21 developed through rulemaking. The Intervenor would
22 have needed to do a petition for waiver under 2.235,
23 the full balance and special circumstances with
24 respect to the subject matter of a particular
25 proceeding are such that the application for renewal

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1 regulation did not give a purpose for which the
2 renewal regulation was adopted. The Intervenor has
3 not done that.

4 One last point on the quote, the purpose
5 and need argument, the one of the cases that the
6 Intervenor in its submissions was citing, and we'd
7 like to cite this case. The case is Burlington v.
8 Lucy. In the Intervenor's petition, on page --
9 staff's page 7, they cite the case in staff's answer
10 to the case where the staff is discussing the
11 Commission's views on -- the Commission's views with
12 respect to Seabrook and Davis-Besse proceedings.

13 And the particular spot on page 29 where
14 the staff is discussing how the Commission does not
15 adopt baseload items and discusses then that
16 alternatives must be alternatives that are capable of
17 meeting the purpose and need of the proposed action.

18 And within that forwarding footnote, once
19 again, it is citing Burlington v. Lucy. Getting to
20 the point of this discussion, within that case, the
21 report in part claims that it should be a general rule
22 rather than specific rules. And in particular, 938
23 F.2d page 199, the Court wrote that Congress did
24 expect agencies to consider an applicant's blunt to
25 the agency's redaction. Congress did not expect the

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1 agency to determine for the applicant what the goal
2 for the applicant supposedly should be.

3 Here again, our view is that it's a
4 challenge to the scope. It's a challenge to
5 rulemaking. They haven't tied a waiver to it. It's
6 not seem to conform to admissible contentions.

7 Hearing no questions on that, may I move
8 on to Contention 2?

9 JUDGE HAWKENS: Please go ahead.

10 MR. ROTH: Thank you, Your Honors. Within
11 Contention 2, and as you have previously heard, the
12 petition does not address the contents of the ER with
13 any specificity. Within their petition, they have a
14 substantial number of documents they cite, there has
15 already been discussion about the contents of the
16 documents as to what they say and what they don't say.
17 Fundamentally missing is any discussion of the ER
18 itself and any demonstration of any errors or
19 omissions within the ER.

20 In particular, the environmental report
21 discusses in Section 2.6.2, which is page 2-34, how
22 Entergy's 2015 integrated review plan, which is a
23 long-term strategy for meeting the customers' power
24 needs, exists. The ER in multiple places describes
25 how it uses the integrated review plan and the basis

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1 to decide which alternatives warrant further
2 investigation and which alternative does not.

3 An item of note, turning to the integrated
4 review plan -- and this is a document that you all
5 read through in 2015 -- Sierra Club actually commented
6 on the integrated review plan. At multiple places in
7 the document, there are responses that Entergy's
8 providing to Sierra Club's comments. The Sierra Club
9 acknowledges the document that was used by the
10 applicant in determining which alternatives were going
11 to be considered further and which ones were not.

12 But the contention, as written, definitely
13 doesn't discuss any reasons why the discussions and
14 voluminous IRP, which is around 99 pages in total, for
15 the ER have any particular errors or omissions that
16 warrant further investigation and eventually a
17 hearing.

18 (Pause.)

19 JUDGE HAWKENS: Hello?

20 MR. ROTH: Hearing no further discussion
21 on that, would Your Honors like us to continue to
22 Contention 3?

23 JUDGE HAWKENS: I have -- this is Judge
24 Hawkens. I have -- the same question that I posed to
25 Mr. Burdick I'd like to pose to you. Namely, could

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1 you address the two studies that Sierra Club said were
2 its best source of support for laying a foundation for
3 this contention? And those were the two studies
4 dealing with -- specifically with Louisiana, pages 29
5 and 30 of their petition.

6 MR. ROTH: That workforce, without going
7 into any technical detail as to the studies, the
8 studies do not seem to demonstrate that the wind
9 resource in fact will be a viable, commercially
10 available source of energy sufficient to replace the
11 power of River Bend.

12 Notably, for instance, since letting
13 onshore wind resources, the 2004 study on the second-
14 to -- or the third-to-the-last page -- no, second-to-
15 the-last page, within the section marked Wind
16 Resource, it states Louisiana's onshore wind resource
17 has virtually no potential for wind power development.
18 So the very study itself was just for onshore, they
19 need further information. There's nothing that says
20 it's going to be commercially viable within the
21 studies. And if we were to study looking at smaller
22 capacity, not the same capacity as River Bend anyway.

23 But more significantly, again, turning to
24 the facts of the contention, I'd like to reiterate
25 that within the IRP wind was discussed available, the

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1 role of it was discussed, within the ER referencing
2 the IRPs, the same thing with stress. And the
3 Intervenor's reliance on the December 2004 and the
4 2005 studies simply don't demonstrate that there is an
5 error or omission in the application or that the
6 particular study shows that, in fact, the wind wasn't
7 viable by itself or placement hours for within.

8 JUDGE HAWKENS: All right. Thank you, Mr.
9 Roth. We have no further questions on Contentions 1
10 or 2 at this time.

11 MR. ROTH: Thank you, Your Honors.

12 MR. GILLESPIE: Okay. Your Honors, thank
13 you. My name is Joe Gillespie. I'm representing the
14 staff with respect to Contention 3.

15 The issue here today on Contention 3 is
16 simply whether the petition included sufficient
17 information in the original petition to meet the
18 standards of 2.09(F)(1)(5) and (6). And there the
19 Commission has repeatedly held that the admissibility
20 requirements are strict by design. The contention
21 language itself may have included adequacy.

22 The only defect that was identified in the
23 original petition with respect to the application
24 under review was that the license renewal application
25 does not address the degradation of the concrete

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1 drywall due to ASR.

2 And F(1)(6) explicitly requires that when
3 a petitioner believes the application fails to contain
4 required information in the petition, must identify
5 each failure and the supporting reasons for their
6 belief. And for a contention of omission, that means
7 that it is the Petitioner's burden to show the facts
8 necessary to establish that the application omits
9 information that should have been included.

10 The petition -- given petition facts
11 demonstrating that omission, and based on an erroneous
12 factual predicate, categorically it bases
13 admissibility on the erroneous assumption.
14 Categorically, degradation due to ASR is not addressed
15 anywhere in the application.

16 The Commission has stated that it is the
17 Petitioner's burden or responsibility to fully read
18 and understand the application and demonstrate how the
19 application is lacking. And a misunderstanding of the
20 contents can affect the basis of the admission.

21 As discussed in the applicant's motion to
22 strike and our answer to that motion, their reply
23 impermissibly adds new material to the adjudication,
24 along with some of the new arguments that are added
25 today with respect to the details of the structures

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1 monitoring program.

2 And by changing the basis from contention
3 of omission to one of inadequacy with respect to this
4 discussion, it vitiates that the timing and the
5 requirements that are associated with the petition.
6 The Petitioner did not include any of the good cause
7 requirements under 2.09(c) that would be needed to
8 permit new or admitted contentions.

9 And so for these reasons, the Board should
10 find that the Contention 3 is inadmissible because it
11 fails to provide sufficient information showing that
12 the required information is omitted, and it fails to
13 show that it didn't -- fails to demonstrate that the
14 materials --

15 JUDGE WARDWELL: Excuse me. Could I
16 interrupt quickly, Mr. Gillespie? This is Judge
17 Wardwell.

18 MR. GILLESPIE: Yes, Your Honor.

19 JUDGE WARDWELL: Where in your original
20 petition -- where in your answer did you claim this
21 was a contention of omission?

22 I also -- on page 29, you state that the
23 petition argues that the applicant fails to properly
24 consider concrete degradation as a result of ASR.
25 That seems to imply that you not only didn't claim it

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1 was a contention of omission, but now you are saying
2 that it's not adequate, if you will.

3 MR. GILLESPIE: Your Honor, while the term
4 "contention of omission" may not have been included on
5 page 29 or 30 --

6 JUDGE WARDWELL: Sorry?

7 MR. GILLESPIE: I'm sorry. Could you --
8 I didn't -- oh, I'm sorry. Yeah. While it may not
9 have included anything specifically on page 29 or 30
10 that said the words "contention of omission," the
11 issue that we took with the petition itself and why we
12 claim it's inadmissible is because of the statement
13 that the application does not include any discussions
14 of ASR-induced degradation.

15 JUDGE WARDWELL: Well, where was that
16 statement made in their petition? Wasn't that made
17 under facts? It wasn't made under the contention or
18 under the basis for contention; isn't that correct?

19 MR. GILLESPIE: I'm sorry. Could you
20 repeat that, Your Honor? Your Honor, could you repeat
21 your question? I would like to make sure I'm
22 addressing it properly.

23 JUDGE WARDWELL: Well, I don't know what
24 my question was. But I'm asking --

25 MR. GILLESPIE: Your Honor --

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1 JUDGE WARDWELL: When you -- you know, my
2 last question was you brought up the quote from Sierra
3 Club saying that there wasn't any discussion in the
4 ASR. And I asked you what section of their petition
5 did that come from, and I believe that came from the
6 part that talks about the facts and not dealing with
7 the contention itself or the basis. What does the
8 contention say?

9 MR. GILLESPIE: The contention itself,
10 Your Honor, states that the LRA does not undertake an
11 adequate aging management review.

12 JUDGE WARDWELL: Okay.

13 MR. GILLESPIE: The only fact that --

14 JUDGE WARDWELL: Your initial --

15 MR. GILLESPIE: -- with the application.
16 I'm sorry. Go ahead.

17 JUDGE WARDWELL: Your initial -- sorry to
18 interrupt you, but --

19 MR. GILLESPIE: No, no, no.

20 JUDGE WARDWELL: -- I want to make sure
21 we're not running out of your time here, if it's
22 nothing that I need, or if you're going down a path I
23 don't think I need. Your initial petition didn't
24 claim it wasn't a contention of omission.

25 In fact, you raise other arguments, and

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1 they're fine, but one of them was not that it was a
2 contention of omission. And, in fact, you implied
3 that it was a contention of adequacy when you talked
4 about properly considering; isn't that correct?
5 That's a yes or no.

6 MR. GILLESPIE: No, Your Honor.

7 JUDGE WARDWELL: And why not? Where did
8 I -- where did I misquote you? Or where in your
9 initial petition have you claimed it's an error of
10 omission where in fact you claimed it was not properly
11 addressed on page -- I believe it was 29, if I
12 remember correctly. Yes.

13 MR. GILLESPIE: Your Honor, if I could
14 please take a moment to confer with my co-counsel?

15 JUDGE WARDWELL: Sure.

16 (Pause.)

17 MR. GILLESPIE: Your Honor, the petition
18 itself included both an adequacy claim -- adequacy --
19 the petition itself was unclear as to whether it was
20 -- it used both arguments adequacy and omission. In
21 the first sentence of the contention, it raised an
22 adequacy argument. But in the bases for the
23 contention, the only issue identified is an omission.

24 And in our response on page 29, we
25 identified that the application -- or the statement

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1 that the application does not include any discussion.
2 We underline the word "any." On page 30, in the top
3 paragraph we identify it as an omission -- or that the
4 argument from the petition is that it omits
5 discussions. And, again, on page 32, that the LRA
6 omits the discussion.

7 But we felt it was needed to address it
8 from an omission standpoint and from an adequacy
9 standpoint.

10 JUDGE WARDWELL: It's always prudent to
11 provide alternative arguments, Mr. Gillespie.

12 MR. GILLESPIE: Thank you, Your Honor.

13 JUDGE WARDWELL: While I've got your
14 attention here, if I can find my -- here we go.
15 Rather than wait for any other discussion, just by
16 looking at the time, I thought I would get into a
17 question I've got, so that I can then bow out probably
18 in a little bit and have my answers.

19 But on page 32, you say that "The
20 applicant further states that the enhancements
21 described in the application to its current structures
22 monitoring program will make the program consistent
23 with GALL." And then you cite to the license renewal
24 application for that.

25 Does that imply that if those enhancements

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1 aren't there, and if in fact there are no enhancements
2 related to the ASR, that the program won't be
3 consistent with GALL?

4 MR. GILLESPIE: Your Honor, the
5 application itself, also in Appendix B-141.

6 JUDGE WARDWELL: Is this Mr. Gillespie?

7 MR. GILLESPIE: Yes, it is.

8 JUDGE WARDWELL: Okay. I just want to
9 make sure.

10 MR. GILLESPIE: And B-141 also submits
11 that it will be consistent with the GALL, aside from
12 the enhancements. That the application on page B-146
13 through B-147 identifies a number of enhancements that
14 are made --

15 JUDGE WARDWELL: And that's -- yeah, B-141
16 on pages 146 and 147?

17 MR. GILLESPIE: Yes, Your Honor.

18 JUDGE WARDWELL: That is the cite? Which
19 is of those relate to ASR? Or if we want to use the
20 term "the reaction with aggregates." It doesn't
21 matter. Either way.

22 MR. GILLESPIE: With respect to the terms
23 of the enhancements themselves do not state words
24 "alkali-silica reaction," but the enhancements
25 themselves still confirm the preventive action, and

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1 the parameters that are monitored all generally relate
2 to, for example, in Element 4, would include visual
3 inspection.

4 JUDGE WARDWELL: You're saying they don't
5 apply to ASR; is that correct?

6 MR. GILLESPIE: No. Your Honor, they do
7 apply to ASR. They apply to all structures in the
8 structures monitoring program. And, again, with the
9 commitment to the GALL, the items identified in the
10 GALL in Section F(5), F(6), the 10 elements there,
11 including the detection of aging effects, monitoring
12 and trending, corrective action consistent with
13 50 Appendix B, are -- all would be included, and could
14 be inspected in the future.

15 JUDGE WARDWELL: So, but none of these are
16 specifically related to ASR as -- I'm just -- I'm
17 trying to clarify a misreading that I had of what you
18 said on page 32, because when I read the sentence "The
19 applicant further states that the enhancements
20 described in the applications to its current
21 structures monitoring program will make the program
22 consistent with GALL," that implied to me that these
23 enhancements were related to ASR because that's what
24 you were talking about throughout your petition --
25 your answer, I should say.

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1 And I was wondering which of those are
2 specifically related to ASR concerns as addressed in
3 Seabrook. And I gather none are specifically related
4 to that; is that correct? That they're just generally
5 related to ASR like they are everything else dealing
6 with the structures monitoring plan for any concrete
7 structure.

8 MR. GILLESPIE: Yes, Your Honor. I would
9 say these are generally related to the ASR as part of
10 the structures monitoring plan. So this is consistent
11 with the guidance -- with the recommendation in the
12 GALL to place -- that is a facility that is accessible
13 to place these structures into the structures
14 monitoring program.

15 JUDGE WARDWELL: Okay. Thank you.

16 JUDGE KENNEDY: Mr. Gillespie, let's stay
17 on the structures monitoring program for just a
18 second. This is Judge Kennedy. Sorry.

19 Entergy has stated that they are committed
20 to GALL Rev 2. Does the NRC recommend that that
21 version of GALL manages ASR-induced aging effects for
22 concrete structures?

23 MR. GILLESPIE: Yes, Your Honor.

24 JUDGE KENNEDY: So GALL Rev 2, structures
25 monitoring program, is what would be recommended for

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1 managing that aging effect.

2 MR. GILLESPIE: Yes, Your Honor.

3 JUDGE KENNEDY: Okay. Is there anything
4 missing? I guess I'm reading that there is nothing
5 missing that should be included as an enhancement,
6 then? For ASR. Sorry. Yes, everything needed to
7 manage ASR is in GALL Rev 2.

8 MR. GILLESPIE: I'm sorry. If I could
9 take one moment to confer.

10 (Pause.)

11 MR. GILLESPIE: Your Honor, unless they
12 had -- unless the particular facility had operating
13 experience that would place them outside the bounds of
14 the background of the GALL, the GALL would be bounding
15 for this issue.

16 JUDGE KENNEDY: All right. Thank you.
17 Just, again, one follow-up question about GALL Rev 2.
18 It's something that has bothered us since we got
19 involved in this. This is Judge Kennedy again. GALL
20 Rev 2 was issued at about the same time that the
21 Seabrook ASR concerns were identified, and before the
22 Information Notice 2011-20 was issued.

23 So we continue to struggle as how it would
24 contain the required attributes to manage cracking due
25 to alkali-silica reaction. I'm curious as to your

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1 reaction to that.

2 MR. GILLESPIE: Your Honor, specifically,
3 GALL Rev 2 identifies in the definition of reaction --
4 alkali-silica reaction, some of the standards
5 identified in the structures monitoring program in
6 GALL Rev 2 are the same as those referenced in the
7 Information Notice.

8 And more specifically with respect to
9 Seabrook Station, that facility, because they had
10 operating experience and had a condition that was
11 found onsite, it would require that additional plant-
12 specific programs -- as I mentioned just a little bit
13 ago, if operating experience onsite would -- if there
14 was an identified issue onsite, that may require
15 additional action. But as River Bend identified an
16 application, there is no indication of onsite
17 operating experience or ASR that has been identified
18 at this point.

19 And so the recommendation in the GALL
20 placed on the structures monitoring program which
21 primarily uses as the first would be to do an
22 inspection.

23 JUDGE KENNEDY: I guess I'm -- this is
24 Judge Kennedy again -- trying to turn it around a
25 different way. So the information that is contained

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1 in the Information Notice 2011-20, and any subsequent
2 information that came out of the Seabrook
3 investigation of their ASR concerns, does not need to
4 inform the GALL Rev 2 aging management program that
5 the --

6 MR. GILLESPIE: Your Honor, the GALL
7 Rev 2, Item 10, and the structures monitoring program
8 identifies operating experience. And operating
9 experience does need to be taken into account in the
10 structures monitoring program. So operating
11 experience like that from Seabrook that was
12 transmitted to licensees in the Information Notice
13 would be taken into account as part of that program.

14 JUDGE KENNEDY: I'll give you that one.
15 What about the first six attributes of the aging
16 management program?

17 MR. GILLESPIE: The operating experience
18 would inform -- would inform how the actions are taken
19 onsite.

20 JUDGE KENNEDY: I think I -- I guess what
21 I'm -- I'm really trying to get at the base level
22 here. I am concerned that GALL Rev 2 came out before
23 the issue was identified and the concerns were
24 addressed at Seabrook. I'm struggling with
25 understanding how that relevant information as regard

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1 to detection criteria is contained in GALL Rev 2.

2 MR. GILLESPIE: Your Honor, the staff's
3 position at this point is that GALL Rev 2 is
4 sufficient, and there has not been a need to update
5 the GALL. It validates the conclusions that were made
6 in it, based on the Information Notice that was sent
7 out.

8 JUDGE KENNEDY: Okay. And just one last
9 follow-up question that's going to get to the same
10 point. At the closure of the Information Notice, it
11 states that Seabrook was the first plant to address
12 ASR-induced concrete degradation as part of license
13 renewal. When the notice was issued, Seabrook was
14 developing aging management programs to manage the
15 effects of aging from ASR-induced degradation.

16 Has anything been provided by Seabrook to
17 manage its aging effect that goes beyond what is
18 currently provided in GALL Rev 2, structures
19 monitoring program?

20 MR. GILLESPIE: If we can take a moment,
21 Your Honor?

22 JUDGE KENNEDY: Sure.

23 (Pause.)

24 MR. GILLESPIE: Your Honor, because of the
25 operating experience at Seabrook, Seabrook is beyond

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1 the GALL where they are taking into account Item 10 of
2 the structures monitoring program with the GALL, and
3 have included a plant-specific program that would
4 address that issue consistent with the GALL.

5 JUDGE KENNEDY: Yeah. And I guess I'm
6 trying to take it a little further. So does that --
7 is there nothing there that needs to be communicated
8 generically to the industry related to an update to
9 GALL?

10 MR. GILLESPIE: Your Honor, there is no
11 intent from the staff to submit further communication
12 on that.

13 JUDGE KENNEDY: Do I read that to mean
14 there is nothing significant there that needs to be
15 communicated to the industry?

16 MR. GILLESPIE: I think that it will not.

17 JUDGE KENNEDY: Okay.

18 MR. GILLESPIE: Your Honor, in the past
19 when the initiatives under GALL, the practice has been
20 to issue interim staff guidance on an issue, and there
21 is no plans at this point to issue any interim staff
22 guidance.

23 JUDGE KENNEDY: All right. That's good.
24 Thank you.

25 JUDGE WARDWELL: Yes. This is Judge

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1 Wardwell again. I've got -- just some clarification
2 here because I got a little confused. But on page 31
3 of your original answer -- of your answer, you state,
4 and I quote, "The LRA does not discuss this ASR --
5 does discuss this ASR potential degradation mechanism
6 in multiple portions of the application, most
7 thoroughly in Subsection 3.5.2.2.2.1, Item 2, cracking
8 due to expansion, reaction with aggregates, and below-
9 grade accessibility."

10 Then you cite at the end of that the
11 license renewal application at 3.5.1-43. And I assume
12 by that cite you mean that's the item number, correct,
13 that's on page 3.5-35 of the license application?

14 MR. GILLESPIE: Yes, Your Honor.

15 JUDGE WARDWELL: And are you implying that
16 this 3.5.1-43 is the thorough discussion of potential
17 degradation mechanisms? Because as I turn to that,
18 all I see is a table with the item number, component,
19 it says all groups except group 6, then says aging
20 effects, cracking due to expansion. That's what we've
21 been talking about. Aging management programs. One
22 sentence, further evaluation, not much. I mean, is
23 that what you mean by "thorough"?

24 MR. GILLESPIE: No, Your Honor. The
25 thorough discussion in 3.5.2.2.1, Item 2, is

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1 referenced in Footnote 108 immediately after the
2 identification of the title of the section. And
3 that's on page 3.5.1-43.

4 JUDGE WARDWELL: What was the purpose of
5 citing 3.5.1-43?

6 MR. GILLESPIE: These other tables and
7 sections of the application are also other areas where
8 reaction of aggregates is discussed.

9 JUDGE WARDWELL: Thank you.

10 JUDGE HAWKENS: Do you have anything else,
11 Mr. Gillespie?

12 MR. GILLESPIE: No, Your Honor.

13 JUDGE HAWKENS: All right. Thank you.

14 MR. GILLESPIE: Thank you.

15 JUDGE HAWKENS: Mr. Taylor?

16 MR. TAYLOR: Yes.

17 JUDGE HAWKENS: In your initial
18 presentation, you exceeded the allotted hour, but we,
19 nevertheless, want to give you a modest amount of time
20 for rebuttal. You may proceed.

21 MR. TAYLOR: Well, it was thanks to your
22 questions, and I appreciate that.

23 The first point I want to make is Mr.
24 Burdick, I believe, cited Section 7.1.1.4 of the ER
25 alleging that Entergy analyzed a combination of

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1 alternatives in response to a question I think from
2 Judge Hawkens.

3 And in looking at that section of the ER,
4 the combination of alternatives were two 400-megawatt
5 natural gas combined cycle units. The next one was
6 four 50-megawatt biomass units. And then the third
7 one was demand-side management programs.

8 You know, again, there is no discussion of
9 a combination of renewable energy and energy
10 efficiency or demand-side management, whatever you
11 want to call it. And that I think is the real crux of
12 why the ER doesn't adequately address the
13 reasonableness of renewable energy and energy
14 efficiency as an alternative.

15 JUDGE HAWKENS: But, Mr. Taylor, do you
16 understand it's your burden, under binding Commission
17 case law, to lay a foundation for your claim that
18 renewables and energy efficiency in some combination
19 can satisfy baseload in the region of interest by
20 2025?

21 MR. TAYLOR: Yes.

22 JUDGE HAWKENS: Is there a sentence in
23 your petition where you say a particular source
24 satisfies that condition precedent?

25 MR. TAYLOR: Just what we discussed

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1 before, that those studies that I have cited indicate
2 that renewable energy and energy efficiency,
3 especially in combination, can in a very short time
4 produce all the power we need.

5 JUDGE HAWKENS: And it's your position
6 that the two most probative studies are those ones
7 that are specific to Louisiana?

8 MR. TAYLOR: I wouldn't say that, no.

9 JUDGE HAWKENS: I thought you said that.

10 MR. TAYLOR: No. I put those in just to
11 show what's going on in Louisiana and that Louisiana
12 could provide renewable energy in time to be online
13 before the River Bend license expires.

14 Those other studies, although they are not
15 Louisiana-specific, certainly indicate how any state,
16 Louisiana or the country as a whole, can get to
17 formulating renewable energy and energy efficiency by
18 a short time period within the time before 2025.
19 So --

20 JUDGE HAWKENS: I'm going to give you the
21 opportunity again to -- earlier you did say that
22 Louisiana was probative. Are there any only extremely
23 probative sources you want to bring to our attention?

24 MR. TAYLOR: I think those -- the Jacobson
25 studies, in terms of renewables, and then also we had

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1 several studies on energy efficiency, that -- it
2 starts on page 14 of our petition. And, again, you
3 have to take it all together. You can't take it and
4 separate out each one and say, "Well, that's not going
5 to work." You have to take them all together. So
6 that was my point.

7 The other point I wanted to make was about
8 baseload. And it's our contention that what these
9 studies say is that taking the Seventh Circuit
10 definition of "baseload" that was cited in I think
11 Entergy's answer, that it's energy intended to
12 continuously produce electricity at or near full
13 capacity with high availability.

14 But that, you know, defines what we're
15 saying that renewable energy and energy efficiency
16 taken together can do. It doesn't require a
17 stationary physical plant to be able to provide
18 baseload. So I think the baseload argument is made in
19 our petition.

20 And, finally, I'd just point the Board to
21 our discussion of the standards for admissibility of
22 contentions in our petition. I'm not sure the Board
23 is aware, but just to emphasize those, I think that
24 Entergy and the Board staff are trying to make the
25 standards too strict, and that we have complied with

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1 the requirements for admissibility.

2 And that's all I have.

3 JUDGE HAWKENS: Judge Hawkens here. Mr.
4 Taylor, I have a question for you --

5 MR. TAYLOR: Sure.

6 JUDGE HAWKENS: -- regarding Contention 3.
7 On its face, it looks like an adequacy contention.

8 MR. TAYLOR: Yes.

9 JUDGE HAWKENS: But I think both Entergy
10 and the staff make rather strong arguments that in
11 your discussion both in the basis section and the
12 factual section you seem to limit it to a contention
13 of omission. In particular, in the basis section, you
14 say the license renewal application "does not address
15 the degradation of the concrete drywell due to ASR."

16 And then in the factual section you say,
17 "The LRA for River Bend does not include any
18 discussion of ASR-induced degradation." And the fact
19 that you don't point to any portion of the license
20 renewal application identifying a deficiency would
21 seem to confirm that at least in your petition you
22 intended it to be a contention of omission. Was that
23 your intention?

24 Now, it looks like in your reply it did
25 appear to morph into a contention of deficiency.

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1 MR. TAYLOR: Well, it didn't morph. I was
2 trying to clarify what I was arguing in the petition.
3 But as you know, the contention itself clearly is an
4 adequacy contention, and it's -- you know, if that was
5 not clear in the basis and the factual recitation,
6 that's why I clarify that in the reply.

7 JUDGE HAWKENS: So it is a challenge to
8 the adequacy of the aging management program rather
9 than a challenge to the failure, the absolute failure
10 to address reaction with aggregates or ASR cracking.

11 MR. TAYLOR: Yes.

12 JUDGE HAWKENS: All right. Do you have
13 anything else, Mr. Taylor?

14 MR. TAYLOR: No. Thank you.

15 JUDGE HAWKENS: All right. The case is
16 submitted. Mr. Taylor, I thank you.

17 Mr. Burdick, Mr. Turk, Mr. Roth, and Mr.
18 Gillespie, thank you for the arguments. And I would
19 ask you to stay online for a few minutes to give
20 Jasmine the opportunity to get any additional
21 information from you.

22 With that, we are adjourned. Please stay
23 on the line.

24 (Whereupon, the above-entitled matter went
25 off the record at 4:32 p.m.)

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